61,875

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907

No. 261.

AMELIA M. HOLT, APPELLANT,

vs.

SAMUEL MURPHY, ANTON H. CLAUSEN, FRANK H. RILEY, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

(20,300.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 335.

AMELIA M. HOLT, APPELLANT,

vs.

SAMUEL MURPHY, ANTON H. CLASSEN, FRANK M. RILEY, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

INDEX.

	Original.	Print.
Caption	*a*	1
Citation and service	*b*	1
Petition for appeal	2	2
Assignment of errors	4	3
Affidavit of value	7	4
Affidavit of value	8	5
Notice of application for appeal	10	6
Order allowing appeal	12	7
Bond on appeal	14	8
Petition in error	15	9
Exhibit A—Case-made from district court	17	10
Petition	18	10
Demurrer	24	14
Amended petition	25	14
Exhibit A—Decision of Secretary Smith, June 12, 1895	34	20
B—Waiver of right of entry	44	27
C—Homestead certificate No. 2764	45	27
D—Deed, Murphy to Batchelder, July 27, 1897	46	28

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	Original.	Print.
Exhibit E—Deed, Murphy to White, January 24, 1898	48	29
F—Deed, Batchelder to White, May 14, 1899	50	31
G—Deed, White to Classen, May 13, 1899	51	32
Answer of A. H. Classen	53	33
Answer of Samuel Murphy	54	34
Order designating judge to try case	55	35
Motion of Classen for judgment	57	36
Motion of Murphy for judgment	58	36
Order overruling motions for judgment	58	37
Amended answer of Classen	59	37
Exhibit A—Petition showing cause why homestead entry No. 223 of Samuel Murphy should be reinstated	63	40
B—Appeal of Samuel Murphy	67	43
C—Decision of Secretary Francis	71	45
D—Motion for review	76	49
E—Denial of motion for review	80	52
Amended answer of Murphy	81	52
Exhibit A—Petition showing cause, &c	86	56
B—Appeal of Samuel Murphy	90	58
C—Decision of Secretary Francis	93	61
D—Motion for review	99	65
E—Denial of motion for review	102	67
Demurrer to answer of Classen	103	68
Demurrer to answer of Murphy	104	68
Order bringing new parties	105	69
Reply to amended answer of Classen	107	70
Reply to amended answer of Murphy	110	72
Demurrers overruled	114	74
Answer of F. M. Riley	114	75
Answer of Myrta S. Mitscher	115	75
Reply to answer of Myrta S. Mitscher	117	77
Exhibit A—Deed, Murphy to Mitscher, June 1, 1899	119	78
Answer of Wm. L. Overholser	121	79
Reply to answer of Wm. L. Overholser	123	81
Exhibit A—Deed, Murphy to Overholser, June 23, 1899	124	82
Answer of Leonidas L. Land and Oscar G. Lee	127	83
Reply to answer of Leonidas L. Land and Oscar G. Lee	129	85
Exhibit A—Contract, Murphy with Land and Lee, June 13, 1900	130	85
B—Deed, Murphy to Land and Lee, June 20, 1900	132	87
Stipulation concerning depositions	133½	88
Proceedings on trial	134	89
Offers of evidence, &c	135	90
Plaintiff rests	144	96
Motion for judgment	144	97

	Original.	Print.
Offers of evidence	144	97
Testimony of Edith Ransom	145	98
J. H. Everest	151	102
A. H. Classen	159	107
B. M. Dilley	164	112
A. H. Classen (recalled)	166	113
Defendants rest	168	114
Further offers of evidence, &c	169	115
Order as to briefs	170	115
Certified copies from General Land Office	170	115
Ewers White's entry papers and relinquishment	171	116
Application of Levi Holt, &c	176	120
Application of Murphy	183	124
Secretary's decision in Blanchard *vs.* White	185	126
Secretary's decision, February 25, 1895	192	130
Proof of service of notice on Murphy	200	136
Secretary's decision on review, June 12, 1895	202	137
Commissioner's letter, December 18, 1897	212	144
Register and receiver's decision, June 16, 1897	213	144
Waiver of right of entry	215	145
Testimony of H. Overholser	217	146
James Geary	218	147
Samuel Murphy	220	148
Final affidavit of Samuel Murphy	222	150
Motion of McMichael for review	223	152
Holt's answer to showing	226	152
Letters from register's office	229	155
Register's certificate	241	160
Deposition of W. L. Overholser	242	163
Oscar G. Lee	247	167
Leonidas L. Land	250	169
Samuel Murphy	254	172
C. W. Ransom	257	174
James H. Wheeler	278	189
W. C. Saddler	284	194
A. H. Classen	285	194
J. H. Everest	308	211
Amelia M. Holt	323	222
G. W. Batchelder	334	230
Samuel Murphy	339	234
F. W. Batchelder	352	242
George L. Stiles	365	251
Amelia L. Holt	373	255
Letter, Charley to Amelia, November 2, 1894	382	261
Letter, Charley to Amelia, February 26, 1894	385	262
Letter, Charley to Amelia, November 3, 1894	388	264
Deposition of Mrs. Julia Dunham	390	265
Judgment entered	393	268
Motion for new trial	394	267
Judgment	397	267

	Original.	Print.
Motion for new trial denied	400	270
Judge's certificate to case-made	400	270
Agreements as to case-made	400	270
Judge's certificate to case made	402	271
Index to case-made	403	271
Dismissal as to certain land	409	274
Motion to dismiss	411	275
Motion to continue	413	276
Order to submit motions	414	277
Orders denying motions	415	277
Judgment	416	277
Opinion	417	278
Petition for rehearing, September 22, 1904	423	284
Petition for rehearing, December 31, 1904	427	285
Order denying rehearing	431	287
Clerk's certificate	432	288

a No. 1474.

AMELIA HOLT, Plaintiff in Error,
vs.
SAMUEL MURPHY and A. H. CLASSEN ET AL., Defendants in Error.

Appeal from the Supreme Court of the Territory of Oklahoma.

b In the Supreme Court of the United States of America.

AMELIA M. HOLT, Appellant,
vs.
SAMUEL MURPHY, ANTON H. CLASSEN, FRANK M. RILEY, WILLIAM L. OVERHOLSER, LEONIDAS L. LAND, OSCAR G. LEE & MYRTA S. MITSCHER, Appellees.

Citation.

To Samuel Murphy, Anton H. Classen, Frank M. Riley, William L. Overholser, Leonidas L. Land, Oscar G. Lee, Myrta S. Mitscher, Greeting:

You are hereby cited and admonished to be and appear at and before the United States Supreme Court at Washington City, D. C. in thirty days next after the service of this citation to answer an appeal taken and filed in the office of the United States Supreme Court from the Supreme Court of the Territory of Oklahoma, wherein Amelia M. Holt was plaintiff in error and you were defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error mentioned should not be corrected and reversed and why Speedy Justice should not be done to the parties in that behalf. Returnable, the 1st day of July, 1906.

Witness the Honorable John H. Burford, Chief Justice of the Supreme Court of the Territory of Oklahoma, this 12 day of June, in the year of our Lord one thousand nine hundred and six and the Independence of the United States of America, one Hundred and thirty.

JNO. H. BURFORD,
Chief Justice of the Supreme Court of the Territory of Oklahoma.

Attest:
BENJ. F. HEGLER,
Clerk Supreme Court.

[Seal Supreme Court, Territory of Oklahoma.]

c [Endorsed:] 1474. Amelia M. Holt *vs.* Samuel Murphy *et al.* Citation. Filed Jun- 16, 1906. Benj. F. Hegler, Clerk Supreme Court.

I hereby certify I received the within Citation on the 13 day of June, 1906, and I served a true Copy, in person, on the attorney of Record for all of the defendants, J. H. Everset and a true Copy on Samuel Murphy Anton H. Classen Frank M. Riley, William Overholser Leonidas L. Land & Myrta S. Mitscher in person. On 13 day of June 1906, and I left a true copy of same with J. H. Everst for Oscar G. Lee his attorney on 13th day of June 1906.

G. W. GARRISON, *Sheriff,*
By J. N. FIGHTMASTER, *Deputy.*

Sheriff Fees.

First person	.50
7 Copys	1.75
	$2.25

1 And afterward, on the twelfth day of June, 1906, there was filed in said cause a petition in equity, which petition reads in words and figures as follows, to wit:

2 In the Supreme Court of the Territory of Oklahoma.

AMELIA M. HOLT, Appellant,
vs.
SAMUEL MURPHY, ANTON H. CLASSEN, FRANK M. RILEY, WILLIAM L. OVERHOLSER, LEONIDAS L. LAND, OSCAR G. LEE, MYRTA S. MITSCHER, Appellees.

Petition in Equity.

To the Honorable John H. Burford, Chief Justice of the Supreme Court of the Territory of Oklahoma:

The above named appellant, Amelia M. Holt, conceiving herself aggrieved by the judgments, orders, and decrees made and entered in the above entitled cause, by the Supreme Court of the Territory of Oklahoma, for the reasons specified in the assignment of errors filed and the assignment of errors filed herewith, and for the further reason that the value of the land in controversy is $100,000.00 as shown by affidavits hereto attached, prays that she may be allowed an appeal to the Supreme Court of the United States, and that a transcript of the record and proceedings and exhibits upon which said orders, judgments and decrees were made, and duly authenticated, may be certified to the Supreme Court of the United States, at Washington, D. C.

JOHN S. JENKINS,
Attorney for Appellant.

Endorsed on back as follows, to wit: No. 1474—Amelia M. Holt, Appellant, *vs.* Samuel Murphy *et al.,* Appellees—Petition in Equity —Filed June 12, 1906, Benj. F. Hegler, Clerk Supreme Court.

3 And afterward, on the same day, June 12, 1906, there was filed in said cause an Assignment of Errors, which read in words and figures as follows, to wit:

4 UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

AMELIA M. HOLT, Appellant,

vs.

SAMUEL MURPHY, ANTON H. CLASSEN, FRANK M. RILEY, WILLIAM L. OVERHOLSER, LEONIDAS L. LAND, OSCAR G. LEE & MYRTA S. MITSCHER, Appellees.

Assignment of Errors.

Comes now the appellant, Amelia M. Holt, and says: that in the decrees, judgments, and orders made in the above entitled cause in the Supreme Court of the Territory of Oklahoma, many and manifest errors have intervened to the great prejudice of the rights of the appellant and the said decrees, judgments and rulings are erroneous for the following reasons:

1st. The court erred in finding that the waiver of appellant's right to perfect her entry and settlement by C. W. Ransom *were* immaterial.

2nd. The court erred in its first conclusion of law, which is as follows: "A homestead entry, valid upon its face, constitutes such an appropriation, and withdrawal of the land, as to segregate it from the public domain, and so long as it remains a subsisting entry precludes it from subsequent entry; because the record shows that Ewers White's homestead entry was set aside by a judgment of the commissioner of the General Land Office, March 7th, 1890, and Levi Holt filed his application to enter, March 11, 1890, before White had appealed; and said application of Holt was suspended pending White's appeal according to an established rule of the Land Office then in force.

3rd. The court erred in its second conclusion of law which is as follows; "A homestead application to enter land already covered by a subsisting entry, can confer no rights whatever upon the applicant;" because the record shows that Ewers White's homestead entry had been set aside by a judgment of the Commissioner of the General Land Office on the 7th day of March, 1890, and Levi Holt's application was offered and accepted, and suspended by the Local

5 Land Office, March 11th, 1890, which was in accordance with an established rule of the General Land Office at that time.

4th. The court erred in its third conclusion of law which is as follows: "Where an application to enter land already covered by a homestead entry is received by the Local Land Office and rejected, and an appeal is taken from such action, it is not a pending application that will attach on the cancellation of the previous entry,

since the appeal can not operate to create, as a matter of law, any right, not secured by the application;" because the record shoes that the application of Levi Holt was not rejected March 11, 1890 but was suspended in accordance with an established rule of the Land Department, then in force. The land was not covered by a valid homestead entry at that time; because White's entry had been cancelled and set aside by judgment of the Commissioner of the General Land Office, four days before Levi Holt offered his application to enter the land and tendered the fees; and further, because the application of Levi Holt to enter said land, was not rejected till after the application of Murphy was received and filed by the Local Land Office. The filing of Murphy was made November 30, 1890, and the application of Holt was rejected September 11, 1891, about ten months after the filing of Murphy.

5th. The court erred in holding that the plaintiff failed to allege or prove a cause of action, and in affirming the decision of the District Court.

6th. The court erred in not rendering judgment for plaintiff on the pleading because the petition states a cause of action, and the answer is confession.

7th. The court erred in making additional defendants over the objection of plaintiff.

Wherefore appellant prays that the judgments, decrees and order of the Supreme Court of the Territory of Oklahoma be reversed and that appellant have such judgment as she is entitled to under the law and in equity.

JOHN S. JENKINS,
Attorney for Appellant.

[Endorsed:] No. 1474. Amelia M. Holt, Appellant, *vs.* Samuel Murphy *et al.*, Appellees. Assignment of Errors. Filed Jun- 12 1906 Benj. F. Hegler, Clerk Supreme Court.

6 And thereafter, on the same day, to wit, June 12, 1906, there was filed in said cause affidavits of value, which affidavits read in words and figures as follows, to wit:

7 In the Supreme Court of the Territory of Oklahoma.

AMELIA M. HOLT, Appellant,
vs.
SAMUEL MURPHY, ANTON H. CLASSEN, FRANK M. RILEY, WILLIAM L. OVERHOLSER, LEONIDAS L. LAND, OSCAR G. LEE & MYRTA S. MITSCHER, Appellees.

Affidavit of Value.

Come- now E. C. Spenny, and after being duly sworn says, that he is well acquainted with the value of the west one-half, and the northeast one-fourth of the southwest one-fourth of section twenty-

seven, township twelve, north range three west of the Indian Meridian in Oklahoma County, in the Territory of Oklahoma containing one hundred and twenty acres, also the northeast quarter of said quarter section, and it is of the value of one hundred thousand dollars.

Signed and sworn to this 9 day of June, 1906.

E. C. SPENNY,

Subscribed and sworn to before me on this the — day of June, 1906.

GEO. E. SWISHER,
Notary Public.

[SEAL.]

My commission expires April 19, 1910.

Endorsed: No. 1474—Amelia M. Holt, Appellant, *vs.* Samuel Murphy *et al.*, Appellees—Affidavit of Value—Filed June 12, 1906. Benj. F. Hegler, Clerk Supreme Court.

8 In the Supreme Court of the Territory of Oklahoma.

AMELIA M. HOLT, Appellant,
vs.
SAMUEL MURPHY, ANTON H. CLASSEN, FRANK M. RILEY, WILLIAM L. OVERHOLSER, LEONIDAS L. LAND, OSCAR G. LEE & MYRTA S. MITSCHER, Appellees.

Affidavit of Value.

Comes now W. O. Robinson and after being duly sworn says, that he is well acquainted with the value of the west one-half, and the northeast one-fourth of the southwest one-fourth of section twenty-seven, township twelve, north range three west of the Indian Meridian in Oklahoma County, in the Territory of Oklahoma, containing one hundred and twenty acres, also the northeast quarter of said quarter-section, and it is of the value of one hundred thousand dollars.

Signed and sworn to this 9th day of June, 1906.

W. O. ROBINSON.

Subscribed and sworn to before me on this the 9th day of June, 1906.

GEO. E. SWISHER,
Notary Public.

[SEAL.]

My Commission expires April 19, 1910.

Endorsed: No. 1474—Amelia M. Holt, Appellant, *vs.* Samuel Murphy *et al.*, Appellees—Affidavit as to Value—Filed June 12, 1906, Benj. F. Hegler, Clerk Supreme Court.

9 And afterward, to wit, June 12, 1906, there was filed in said cause a notice of presentation of a petition for appeal, which notice reads in words and figures as follows, to wit.

10 In the Supreme Court of the Territory of Oklahoma.

AMELIA M. HOLT, Appellant,
vs.
SAMUEL MURPHY, ANTON H. CLASSEN, FRANK M. RILEY, WILLIAM L. OVERHOLSER, LEONIDAS L. LAND, OSCAR G. LEE, & MYRTA S. MITSCHER, Appellees.

Notice.

To the Appellees, Samuel Murphy, Anton H. Classen, Frank M. Riley, William L. Overholser, Leonidas L. Land, Oscar G. Lee, and Myrta S. Mit-cher, and their attorney of record, J. H. Everest.

You and each of you will take notice that the appellant, Amelia M. Holt, will file affidavits in the Supreme Court of the Territory of Oklahoma, in support of *their* petition for an appeal to the Supreme Court of the United States, showing the value of the land in controversy to be more that $5000.00.

And you are hereby notified that said application and petition for appeal to the Supreme Court of the United States, will be presented to the Chief Justice of the Supreme Court of the Territory of Oklahoma, for his allowance on the 12th day of June, 1906, or as soon thereafter as the court will the same, and you are admonished to file your affidavits controverting the value of said land in controversy if any you desire to make.

JOHN S. JENKINS,
Attorney for Appellant.

Service of the above notice is hereby accepted this the 8th day of June, 1906.

J. H. EVEREST,
Attorney for Appellees.

Endorsed: No. 1474—Amelia M. Holt, Appellant, *vs.* Samuel Murphy *et al.*, Appellees—Notice of presentation of Petition for Appeal—Filed June 12, 1906, Benj. F. Hegler, Clerk Supreme Court.

11 And afterward, June 12, 1906, there was filed in said cause an order for appeal, which order reads in words and figures as follows, to wit:

12 In the Supreme Court of the Territory of Oklahoma.

AMELIA M. HOLT, Appellant,
vs.
SAMUEL MURPHY, ANTON H. CLASSEN, FRANK M. RILEY, WILLIAM L. OVERHOLSER, LEONIDAS L. LAND, OSCAR G. LEE, & MYRTA S. MITSCHER, Appellees.

Order.

Now on this 12th day of June, 1906, comes the appellant, Amelia M. Holt by her attorney, John S. Jenkins, and files herein, and presents to the court, her petition and assignment of errors, praying for an allowance of an appeal and a transcript of the record and proceedings, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as proper in the premises.

Upon proper consideration whereof, I hereby allow the appeal and direct and command the clerk of this court to transmit to said Supreme Court of the United States, a true, correct and certified transcript of the record and proceedings herein.

It is further ordered, that the appellant shall give bond for the payment of all costs that may occur in said proceedings, or in lieu of such bond, shall deposit with the clerk of the United States Supreme Court, such sum as may be required by said clerk as security for costs that may occur in said action, and shall pay all the costs in this court, subject to the final order taxing costs herein.

JNO. H. BURFORD,
Chief Justice of the Supreme Court of the Territory of Oklahoma.

Attest:
BENJ. F. HEGLER,
[SEAL.] *Clerk Supreme Court.*

Endorsed: No. 1474—Amelia M. Holt, Appellant, *vs.* Samuel Murphy *et al.*, Appellees—Order Allowing Appeal—Filed June 12, 1906, Benj. F. Hegler, Clerk Supreme Court.

13 And thereafter, to wit, June 12, 1906, there was filed in said cause a cost bond, which cost bond reads in words and figures as follows, to wit:

14 In the Supreme Court of the Territory of Oklahoma.

AMELIA M. HOLT, Appellant,
vs.
SAMUEL MURPHY, ANTON H. CLASSEN, FRANK M. RILEY, WILLIAM L. OVERHOLSER, LEONIDAS L. LAND, OSCAR G. LEE, & MYRTA S. MITSCHER, Appellees.

Cost Bond.

Amelia M. Holt, Appellant, as principal, A. M. Jenkins and E. M. Biebel, as sureties, do hereby undertake to pay all costs that may accrue in the above entitled cause in case the appellant shall be adjudged to pay the same, or in case the same cannot be collected of said appellees if judgment be against them that appellant will pay the costs made by them.

Conditioned that the appellant shall prosecute her appeal to effect and if she fail to make her plea good, she will pay all costs.

Witness our hands this 9th day of June, 1906.

A. M. JENKINS,
E. M. BIEBEL.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

A. M. Jenkins and E. M. Biebel, being duly sworn, each for themselves, deposes and says that she is a resident of the Territory of Oklahoma, and that she is worth the sum of Five Hundred Dollars above all debts and liabilities, besides property exempt by law from execution.

[SEAL.] ROBERT E. L. HITT,
Notary Public.

Subscribed and sworn to before me this the 9 day of June, 1906. My Commission expires 2/14/10.

Approved June 12, 1906,
JNO. H. BURFORD,
Chief Justice.

Endorsed: No. 1474—Amelia M. Holt, Appellant, *vs.* Samuel Murphy *et al.,* Appellees—Cost Bond—Filed June 12, 1906, Benj. F. Hegler, Clerk Supreme Court.

15 In the Supreme Court of the Territory of Oklahoma.

AMELIA M. HOLT, Plaintiff in Error,
vs.
SAMUEL MURPHY, A. H. CLASSEN, Defendants in Error.

Petition in Error.

The said Amelia M. Holt plaintiff in error, complains of said defendants in error, for that said Samuel Murphy, A. H. Classen, F. M. Riley, William Overholser, L. L. Lamb, O. G. Lee, and Myerta S. Mitscher, at the April 1893 term of the District Court of Oklahoma County, Territory of Oklahoma, recovered a judgment, by the consideration of said Court, against the said Amelia M. Holt, in a certain action then pending in the said court, wherein the said Amelia M. Holt was plaintiff and the said Samuel Murphy, A. H. Classen, F. M. Riley, William Overholser, L. L. Lamb, O. G. Lee, and Myerta S. Mitscher were defendants. The original case-made duly certified and attested is hereto attached and marked exhibit "A" and made a part of this petition in error; and the said Amelia M. Holt avers, that there is error in said record and proceedings, in this to wit:

1. Said Court erred in over-ruling the motion of plaintiff in error for a new trial.

2. Said court erred in not rendering judgment for plaintiff in error on the evidence as shown by the record hereto attached.

3. Said court erred in not rendering judgment for the plaintiff in error on the pleadings.

4. Said court erred in admitting evidence on the part of the defendants in error.

5. Said court erred in refusing and ruling out competent and legal evidence on the part of the plaintiff in error.

6. Said court erred in refusing to admit in evidence the
16 deposition of the defendant A. H. Classen.

7. Said court erred in not admitting in evidence the depositions of J. H. Everest.

8. Said court erred in refusing to make separate findings of fact and conclusion of law at the time of delivering his decision on this cause. Wherefore, Plaintiff in error prays that said judgment so rendered may be reversed, set aside and held for naught, and that a judgment may be ordered to be rendered in favor of the plaintiff in error, and against the defendant in error, upon the competent evidence given at the trial and other competent evidence to be considered by the court contained in the case-made, and that the plaintiff in error be restored to all the rights she has lost by the rendition of said judgment, and for such further relief as to the court may seem just.

AMELIA M. HOLT,
Plaintiff in Error,
By J. S. JENKINS,
Attorney for Plaintiff in Error.

Filed Feb. 26 1904.
BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

TERRITORY OF OKLAHOMA, *Oklahoma County:*

The undersigned attorney for the defendant in error hereby waives service of summons in error, and hereby enter our appearance in this cause in the Supreme Court of the Territory of Oklahoma.

J. H. EVEREST,
Att'y Def'ts in Error.

Filed Feb. 26 1904.
BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

17 TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

In the District Court within and for said County and Territory.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY, A. H. CLASSEN ET AL., Defendants.

Case-made.

Be it remembered that heretofore to wit, on the 16th day of September 1901 the said plaintiff Amelia M. Holt commenced her action against said defendants, by filing in the District Court of Oklahoma County, on that date, her petition, which is in words and figures as follows to wit:

EXHIBIT "A."

Filed Feb. 26 1904.
BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

18 In the District Court in and for Oklahoma County, Territory of Oklahoma.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY and ANTON H. CLASSEN, Defendants.

Petition.

The plaintiff Amelia M. Holt states as her cause of action that she is the surviving widow of Levi Holt deceased; and sole heir for the hereinafter described land, that said Levi Holt — on the — day of May 1893; that her husband Levi Holt through his attorney in fact Julius V. Briesen on or about March 11th 1890 filed his Soldier's Declaratory Statement and application to make homestead entry on the South-west quarter of Section Twenty-seven Township Twelve

Range Three West of the Indian Meridian in Oklahoma Territory, (S. W. ¼-27-12-3, W. Indian M. O. T.) under section 2309 of the Revised Statutes of the United States, which said land was then subject to homestead entry and said Holt qualified; that the right of the said Levi Holt, to file on said land as aforesaid was contested by the defendant, Samuel Murphy and pending said contest Holt died; that on or about the 12th day of June 1895 said contest was finally decided in favor of the heir of Levi Holt, deceased, and this plaintiff was awarded a right to have her said homestead entry perfected in her own name a copy of said decision is hereto attached, and made a part of this petition and marked exhibit "A;" that defendant Samuel Murphy was duly notified of said decision of the Honorable Secretary of the Interior, and that said defendant wholly failed to show any cause why the said filing of said Levi Holt should not be placed of record and made no showing as to the dis-qualification of Holt, deceased, plaintiff further alleges that after contest and during the time allowed to enter, the defendant, Samuel Murphy made a contract with the plaintiff's attorney C. W. Ransom, whereby said Ransom should deceive the plaintiff as to her right to
19 settle on said land, and should retain his filing on said land above described, and that said defendant, Samuel Murphy should pay to said C. W. Ransom the sum of Two Thousand Dollars ($2000.00), and the said Samuel Murphy was to prove up on said land and obtain his patent therefor from the United States, and that on the obtaining of said patent the defendant, Samuel Murphy was to deed to Eweris White the West half and the North-west quarter (W-½ and N. W. ¼) of said land above described and said Ransom was to prepare and file in the United States Land Office in the City of Oklahoma City such papers as would deceive the Officers of the said department of the United States, and make it appear to said officers that the heirs to said Levi Holt had abandoned and relinquish- all their rights and claim in and to the land first above described to Samuel Murphy and deceive the plaintiff and prevent her from settling on said land; that said Ransom filed said papers and deceived the Officers of the Land Office as agreed a copy of said release is hereto attached marked exhibit "B," and did deceive the plaintiff and prevent her settlement.

Plaintiff further alleges that in compliance with said contract the defendant, Samuel Murphy obtained a patent to said land about the 9th day of January 1895, a copy of said patent is hereto attached marked exhibit "C" and made a part of this petition. That C. W. Ransom furnished all necessary papers to show that the heirs to Levi Holt had abandoned and relinquished all their right to the land first above described, a copy of said papers is hereto attached marked exhibit "B" and made a part of this petition; that on the 25th day of January 1899 the defendant Samuel Murphy conveyed to said Eweris White the West half and the North-west quarter of said land first above described, a copy of said deed is hereto attached marked exhibit "D" and made a part of this petition. And on the 4th day of May 1899 said Eweris White conveyed to the defendant Anton

H. Classen the said West half and the said North-west quarter (W. ½ N. W. ¼) of said land first above described, a copy of said deed is hereto attached marked exhibit "E" and made a part of this petition.

20 The plaintiff further alleges that on the 4th day of May 1899 and also at the time said Ransom filed said pretended release the defendant, A. H. Classen was Receiver of the Land Office at Oklahoma City and that he had full knowledge of all the facts above stated and all the papers filed in said land office in reference to said land above described.

Plaintiff further alleges that the defendant, A. H. Classen purchased said land from Eweris White with full knowledge of all the facts above stated, pending a law suit between Eweris White and W. T. McMichael in reference to said land in which the petition set out substantially the same facts as above alleged with reference to Eweris White, and had himself made a party defendant in said suit; that the defendant, Classen purchased said land from said Eweris White pending said litigation for the sum of Two Thousand five hundred dollars ($2500.00) when in fact at the date of said transfer the land conveyed to him was in fact, of the value of Twenty thousand dollars ($20.000.) that defendant Classen was receiver of the Land Office when said Ransom filed said release and had full notice of the same.

Plaintiff further alleges that the land herein sued for is of the value of Thirty thousand dollars ($30.000).

Plaintiff further alleges that the acts and contract of the defend- and Samuel Murphy, C. W. Ransom and Eweris White as above stated were a fraud on this plaintiff, and that said C. W. Ransom had no authority from this plaintiff to enter into any such contract or agreement and that said Ransom and said Samuel Murphy entered into said agreement with the intent to defraud this plaintiff out of said land, and the defendant Classen well knew that fact and entered into said fraud and received the benefits of said transaction; that on or about the 1st day of January 1899 and about the 4th day of May 1899 the defendant Samuel Murphy and A. H. Classen paid the said Two thousand dollars ($2000.00) to said C. W. Ransom and his assignee as a bribe all of which the said C. W. Ransom

21 appropriated to his own use and benefits, all of which facts the defendant well knew.

Plaintiff further alleges that shortly after the death of her husband Levi Holt, as above stated, she employed C. W. Ransom as her attorney to represent her interest in the United States Land Office at Oklahoma City, and through all the Courts to which said matter might be appealed, and to procure for her a filing on said land, and that she gave to said Ransom no other authority and the defendants well knew the same at the time they procured said release from said Ransom.

Plaintiff further alleges that she had no knowledge of the acts done and payments made or payments to Ransom or of his executing a waiver of her rights to prevent her homestead entry on said land or of the frauds committed on her by said C. W. Ransom and

these defendants did on or about the 8th day of August 1901 which was after a patent had issued to Murphy for said land. Up to that time she believed and was informed, by letters received from said C. W. Ransom that he was representing plaintiff faithfully in said Land Office, and that he would soon recover said land for her.

Plaintiff further alleges that she never at any time received a portion of the money paid to said C. W. Ransom by the defendants.

Plaintiff further alleges that she is the equitable owner of the lands above described and entitled to immediate possession of the same and was prepared and would have perfected entry and settled on said land as required by law.

Plaintiff further alleges that the patent to said land would have been issued to her except for the acts and frauds of C. W. Ransom and defendants and for no other reason.

Plaintiff further alleges that she was at all times and now is legally qualified to make homestead entry on the public lands of the United States and has been so qualified, at all times above alleged; that she never violated any of the laws of the United States in reference to the opening of Oklahoma — settlement, by reason of
22 fraud, Secretary and President were deceived into issuing a patent to Murphy and but for said frauds would have issued said patent to this plaintiff.

Plaintiff here tends to the defendants Samuel Murphy and A. H. Classen the sum of fifty dollars ($50.00) the amount expended by them in procuring a patent to said land from the Government of the *of the* United States, such as filing fees, and other necessary expense and costs legally incurred at the United States Land Office.

Wherefore: plaintiff prays that defendants, Samuel Murphy and Anton H. Classen be summoned to answer this petition and on a final hearing the plaintiff have a decree establishing a resulting trust, and that said Samuel Murphy and Anton H. Classen be declared trustees for this plaintiff holding the legal title to said land above described, in trust for her, and that they be ordered to convey the legal title to said land to this plaintiff, and for all other equitable relief to which this plaintiff is entitled.

J. S. JENKINS &
A. L. BROWN,
Plaintiff's Attorneys.

Endorsed: No. 3021 Amelia M. Holt plaintiff *vs.* Samuel Murphy and A. H. Classen defendants. Petition. Filed September 16th, 1901 B. D. Shear Clerk.

23 And afterwards to wit; on the 18th day of September 1901 the defendants Samuel Murphy and A. H. Classen filed there general demurrer which is in words and figures as follows to wit:—

24 In the District Court of the Third Judicial District within and for Oklahoma County, Territory of Oklahoma.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY and A. H. CLASSEN, Defendants.

Demurrer.

Comes now the above named defendants, and each of them and file this their joint demurrer to the petition of plaintiff, and as grounds and reason for said demurrer, allege and say: The said petition wholly fails to state facts sufficient to constitute any cause of action against the defendants or either of them.

Wherefore, defendants pray for a dismissal of said suit and for their costs herein expended.

J. H. EVEREST,
Attorney for Defendants.

Endorsed: Number 3021, in the District Court of Oklahoma County, Territory of Oklahoma, A. M. Holt *vs.* Samuel Murphy and A. H. Classen Demurrer. Filed September 18th 1901 B. D. Shear Clerk by M. McKinley, Deputy.

25 And afterwards to wit:—on the 15th day of February 1902 the plaintiff confessed the demurrer of the defendants and filed her amended petition which is in words and figures as follows:—

In the District Court in and for Oklahoma County, Territory of Oklahoma.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY and A. H. CLASSEN, Defendants.

Amended Petition.

Plaintiff, Amelia M. Holt, states as her cause of action that she is the surviving widow of Levi Holt, deceased, and is sole heir for the hereinafter described lands that plaintiff has not married since the death of her husband Levi Holt.

Plaintiff further states that she is a native born citizen of the United States, over twenty one years of age, that she never entered what is known as the Oklahoma Country in violation of law before the 22nd day of April, 1889 at 12 O'clock, M.; that she has never used her right as a citizen of the United States to file on any of the public domain of the United States; that she is now and has been at the dates hereinafter mentioned legally qualified to make entry for homestead for the public lands of the United States.

Plaintiff further states that her said husband, Levi Holt, was a native born citizen of the United States, an honorably discharged soldier of the late civil war; that he was over twenty one years of age and legally qualified to make homestead entry for public
26 lands of the United States at the time he made his application to file on the land in controversy, hereinafter set forth, and at all other times up to the day of his death; that said Levi Holt did not enter the Oklahoma Country in violation of the Proclamation of the President or of the statute of the United States, prior to 12 O'clock M. of the 22nd day of April, 1889, or at any other time, that he never exhausted his right as a citizen of the United States to make homestead entry on the public domain of the United States or of the land opened to settlement in what is known as the Oklahoma Country; that said Levi Holt died on or about the — day of May, 1893; and this plaintiff was substituted for her husband Levi Holt that her said husband, Levi Holt, through his attoreny in fact, Julius Briesen, on or about the 11th day of March, 1890, filed his soldier's declaratory statement and application to make homestead entry on the south west quarter (¼) of section twenty seven (27) township twelve (12) N. of range three (3) west of the Indian meridian, in Oklahoma Territory, in accordance with the laws of the United States; and tendered to the Register and receiver of the Land Office the legal fees for said filing which said land was *the* subject to homestead entry; that the right of the said Levi Holt to file on said lands as aforesaid was contested by the defendant, Samuel Murphy, and the said Levi Holt died pending said contest; that on or about the 12th day of June, 1895, said contest was decided in favor of the heirs of Levi Holt, deceased, and this plaintiff was awarded the right to her said husband's entry heretofore mentioned. A copy of said decision is hereto attached and made a part of this petition, marked "Exhibit A"; that the defendant, Samuel Murphy, was duly notified of said decision of the Honorable Secretary of the Interior and that said defendant wholly failed to show any cause why the said filing of said Levi Holt should not be placed of record, and made no showing as to the disqualification of said Levi
27 Holt.

Plaintiff alleges that Ewers White entered the Oklahoma Country in violation of the Act of Congress and the President's proclamation to-wit prior to noon April 22, 1889. That said Ewers White obtained a void filing on said land, and afterwards, relinquished said land under an agreement with defendant Samuel Murphy that said Murphy would convey him the west ½ and the N. E. ¼ of said land, that said land was conveyed to Ewers White by said Murphy as agreed and said A. H. Classen will knew the facts at the time he pertended to purchase said land from said Ewers White.

Plaintiff further alleges that after contest and pending the time allowed to enter, the defendant, Samuel Murphy, made a contract with the plaintiff's attorney, C. W. Ransom, whereby said Ransom should deceive the plaintiff as to her right to have her said filing entered of record and to settle on said land above described, and that

the defendant, Samuel Murphy, should retain his filing on said land above described, and that said defendant, Samuel Murphy, should pay to said C. W. Ransom the sum of Two Thousand Dollars (2,000) and that said Samuel Murphy was to prove up on said land and obtain a patent therefor from the United States and that on the obtaining of said patent, the defendant, Samuel Murphy, should deed to Ferdinand Batchelder the west half (½) and the north east quarter (¼) of said land above described for the use and benefit of the heirs of Levi Holt and that said Ferdinand Batchelder should be the custodian of the legal title to said one hundred and twenty acres (120) of land; that said Ferdinand Batchelder was not to pay any consideration for said land or for any right or interest therein further than to be the custodian of the legal title to said one hundred and twenty (120) acres of land; that by this contract and
28 agreement the control of the legal title to said land was to be placed under the control and direction of said C. W. Ransom. Upon this agreement entered into between said Samuel Murphy and said C. W. Ransom, as the attorney of record for the said heirs of Levi Holt, said Ransom was to prepare and file in the United States Land Office in the City of Oklahoma city, O. T. such papers as would deceive the officers of the land department of the United States except A. H. Classen and make it appear to said officers that the heirs of said Levi Holt had abandoned waived and relinquished all of their right and claim in and to said land, first above described, to Samuel Murphy, and deceive the plaintiff and prevent her from entering on said land; that said Ransom filed said papers and deceived the officers of the land department of the United States as agreed upon; except defendant A. H. Classen who was informed a copy of said release and waiver is hereto attached marked "Exhibit B" and made a part hereof, that said Ransom did deceive the plaintiff and prevent her from making settlement on said land, and also deceived the officers of the Land Office.

Plaintiff further alleges; that in compliance with said contract the defendant, Samuel Murphy, obtained a patent to said land, first above described, on the 9th day of January, 1898. A copy of said patent is hereto attached marked "Exhibit C" and made a part of this petition. That said C. W. Ransom furnished all necessary papers to show that the heirs of Levi Holt had abandoned, relinquished and waived all their right to the land first above described. A copy of said paper is hereto attached marked "Exhibit B" and made a part of this petition. That on the 27th day of July, 1897, Samuel Murphy and wife, Louisa Murphy, conveyed the One hundred and twenty (120) acres of land above mentioned to Ferdinand Batchelder for a stated consideration of Two Thousand Dollars ($2,000); that said Ferdinand Batchelder did not pay Two Thousand Dollars (2,000) for said land or any other amount, but said land was conveyed to said Ferdinand Batchelder as trustee for the use and benefit of the heirs of Levi Holt as above stated. A copy of said deed is hereto attached marked "Exhibit D" and
29 made a part hereof. That on the 24th day of January, 1898, the defendant, Samuel Murphy and wife pertended to convey

to Ewers White the west half (½) and the north east quarter (¼) of said land first above described, being the same land before conveyed to said Ferdinand Batchelder. A copy of said deed is hereto attached marked "Exhibit E" and made a part of this petition, the same being conveyed without consideration.

Plaintiff further states; that on the 12 day of May 1899, the defendant, A. H. Classen, with full knowledge of all the facts above stated and with full knowledge that the said Ferdinand Bachelder did not own said one hundred and twenty (120) acres of land but was the naked trustee for the plaintiff, and well knowing that the legal title to said lands was conveyed to said Ferdinand Batchelder for the use and benefit of this plaintiff, and with full knowledge of the fact that said Samuel Murphy had made a contract with said C. W. Ransom as above stated, and well knowing that said Ferdinand Batchelder nor said C. W. Ransom had any right or interest in said land but that the equitable title of said land was in this plaintiff and that the legal title was merely placed in the name of Ferdinand Batchelder without consideration on the part of said Batchelder and in the face of this knowledge made a pretended purchase of said land from said Ferdinand Batchelder and caused said Ferdinand Batchelder to make a quit claim deed to said land to said Ewers White, for the benefit of said Classen. A copy of said deed from Ferdinand Batchelder to Ewers White is hereto attached marked "Exhibit F" and made a part of this petition; that said A. H. Classen pretended that he had paid to said Ferdinand Batchelder the sum of Fifteen Hundred Dollars ($1500) for said one hundred and twenty (120) acres of land as above stated.

All of which statements were false and were without foundation. That said A. H. Classen did not pay Ferdinand Batchelder Fifteen Hundred Dollars ($1500) or any other amount for said quit claim deed as above stated but paid $3,000 to said C. W. Ransom for the fraudulent purpose of obtaining a pretended title to said one hundred and twenty (120) acres of land, which said Classen well knew at said time was the property of this plaintiff.

On the 13th day of May, 1899, said Ewers White, pretended to convey to the defendant, A. H. Classen, the said west half (½) and the said north east quarter (¼) of said land first above described. A copy of said deed is hereto attached marked "Exhibit G" and made a part of this petition.

Plaintiff further alleges; that on the 13th day of May, 1899 and also at the time said Ransom filed said pretended waiver as above stated, the defendant, A. H. Classen, was Receiver of the land office at Oklahoma City; that he had full knowledge of all the facts above stated and of the papers filed in said land office in reference to said land above described.

Plaintiff further alleges; that the defendant, A. H. Classen, pretended to purchase said land from Ewers White, with full knowledge of all the facts above stated; that at the time said Classen pretended to purchase said land from said Ewers White, said Classen pretended to pay said White the sum of Twenty Five Hundred Dollars (2500) for said land, when as a matter of fact said land at

said date was of the actual value of Twenty Thousand Dollars (20,000) and is now of the actual value of One Hundred Thousand Dollars (100,00-); that the defendant, Classen was Receiver of the land office when said Ransom filed said pretended Waiver as aforesaid and had full knowledge of same, and had full knowledge of the fact that said Ransom had no authority in law or otherwise to file said pretended waiver or to execute and deliver the same.

Plaintiff further alleges; that the acts and contract of the defendant, Samuel Murphy, and C. W. Ransom as above stated, were a fraud on the rights of this plaintiff and that said C. W. Ransom had no authority from this plaintiff to enter into any such contract or agreement and that said C. W. Ransom and defendant, Samuel Murphy, entered into said agreement with intent to defraud this plaintiff out of said land, and the defendant, Classen, well
31 knew that fact and entered into said fraud and received the benefits of said transaction and receive- said legal title from said Ferdinand Batchelder as above stated, well knowing at the time of receiving said deed that said Ferdinand Batchelder only held the legal title in trust for this plaintiff and that this plaintiff was the true owner of said One Hundred and Twenty (120) acres of land. That on or about the 1st day of January, 1899, and about the 13th day of May, 1899, the defendant, A. H. Classen, paid the said C. W. Ransom the sum of Three Thousand Dollars (3,000) and caused the said Ferdinand Batchelder to convey said one hundred and twenty acres of land to said Ewers White by a quit claim deed as above stated, all of which the said Classen and the said Murphy, the defendants herein, well knew at the time was a fraud on the rights of the plaintiff herein, and well knew that the said Ferdinand Batchelder nor the said Ewers White had any right or interest whatever in said and; all of which money the said C. W. Ransom appropriated to his own use and benefit; all of which facts the defendants well knew and understood before the payment of said money.

Plaintiff further alleges; that shortly after the death of her husband, Levi Holt, as above stated, she employed the said C. W. Ransom as her attorney to represent her interest in the United States Land Office at Oklahoma City and through all the courts to which said matter might be appealed and to prosecute for her a filing on said land and that she gave to said Ransom no other authority, and the defendants well knew that fact at the time they procured said pretended waiver from said Ransom as aforesaid.

Plaintiff further alleges that she had no knowledge of the acts done and payments made or to be made to said Ransom or of his executing a waiver of her rights to perfect her husband's entry on said lands until on or about the 8th day of August, 1901, which was after a patent had issued to Murphy for said land. Up to that time she believed and was informed by letters received from said C. W. Ransom that he was representing plaintiff faithfully in said
32 land office and that he would soon recover said land for her.

Plaintiff further alleges; that she never at any time received

any portion of the money paid to said C. W. Ransom by the defendnats.

Plaintiff further alleges that she is the owner of all the lands above described and entitled to the immediate possession of same and that she would have settled on said land and performed all of the acts required of her by law if she had not been prevented from so doing by the fraud of the defendants herein as above stated.

Plaintiff further alleges; that a patent to said land would have been issued to her, except for the acts and frauds of the said C. W. Ransom and the defendants and for no other reason.

Plaintiff here tenders to the defendants, Samuel Murphy and A. H. Classen the sum of fifty Dollars ($50.00) the amount expended by them in procuring the patent to said land from the Government of the United States, such as filing fees and other necessary legal expenses and costs legally incurred at the United States Land Office.

Plaintiff further alleged; that the defendant, Classen, since about the time of the institution of this suit, platted the north half (½) of said quarter section and the south west quarter (¼) of said quarter section into a town site and proceeded to have the same staked into lots, parks, streets and alleys, and is now proceeding to grade said streets and is building brick pavements thereon and is preparing to, and, unless restrained by injunction, will sell said lots to a large number of persons who will proceed to erect houses and barns thereon, and that ere long the said land will be completely built up as a town, whereby this plaintiff will suffer great and irreparable injury, and the said land will be taken from her and be rendered unfit for use as a homestead, and in addition thereto, she will be involved in a vast amount of expensive, tedious and troublesome litigation, by reason of the fact that such parties will have placed their property, their residences and their homes on said lands.

Wherefore, plaintiff prays that defendants, Samuel Mur-
33 phy, and A. H. Classen, be summoned to answer this petition and on the final hearing the plaintiff have a decree establishing a resulting trust and that said Samuel Murphy and A. H. Classen be declared trustees for this plaintiff, decreeing that they hold the legal title to said land above described in trust for the use and benefit of this plaintiff; that they be ordered and decreed to convey said legal title to said land to this plaintiff, and for all other legal and equitable relief to which this plaintiff may be entitled.

J. S. JENKINS &
J. L. BROWN,
Attorney- for Plaintiff.

Endorsed: # 3021 Amelia M. Holt, Plaintiff *vs.* Samuel Murphy & A. H. Classen defendant Amended Petition. Filed Feb. 15, 1902. B. D. Shear, Clerk, by M. McKinley, Deputy.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

I, D. B. Shear, Clerk of the District Court in and for Oklahoma County, Territory of Oklahoma, do hereby certify the above and

foregoing to be a full, true, correct and complete copy of Amended Petition in the case # 3021, Holt *vs.* Murphy *et al.* as the same appears on file and of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 2nd day of September 1903.

B. D. SHEAR,
Clerk District Court,
By WILL H. CLARK, *Deputy.*

Endorsed: The exhibits are copied in the record. J.

34 EX. "A."

Practice—Appeal—Review—Application to Enter.

McMICHAEL
v.
MURPHY ET AL.

(On Review.)

In the computation of the time allowed for appeal from the General Land Office, where a motion for review has intervened, the appellant is entitled to the additional ten days allowed, independently of the same period given for filing the review, where notices of the Commissioner's action in each case are sent through the mails by the local office.

The rights of the appellant are not prejudiced by the negligence of the local officers, where the party himself is guilty of no laches.

A motion for review will not lie for the consideration of a question not in issue when the original decision was rendered.

No rights are secured under an application to enter filed at a time when the land is covered by the record entry of another.

An application to enter land subject thereto is equivalent to an actual entry so far as the rights of the applicant are concerned, and, in the event of his death, his heirs are entitled to complete the entry.

Secretary Smith to the Commissioner of the General Land Office, June 12, 1895.

(J. I. P.)

By your office letter "H" of April 11, 1895, you transmitted here a motion by Samuel Murphy to review and reverse the decision of the Department in the above entitled case, dated Feb. 25, 1895 (20 L. D., 147), and by your office letter "H" of April 16, 1895, you transmitted an amended supplemental motion for review (so called) of said decision, filed also by Mr. Murphy.

The tract involved is the S. W. ¼ of Sec. 27, T. 12 N., R. 3 W., Oklahoma City land district, and before stating the assignment of errors on which the motion for review is based, a brief resume of the pertinent facts in the case, as set forth in the decision complained of, so far as they affect Murphy and Holt, is deemed necessary.

On March 7, 1890, there was pending in your office, on appeal, the case of Blanchard *v.* White *et al.,* White being the homestead entry man of the tract in question. On that date your office, affirming the decision of the local office, held White's entry for cancellation. Four days thereafter, viz: on March 11, 1890, and before any appeal from said decision had been taken, Levi Holt, through his attorney in fact, one Julius V. Briesen, filed a soldier's declaratory statement and application to make homestead entry of said tract under
35 section 2309 of the Revised Statutes of the United States. That application, so says the decision complained of, "was received at the local office but not placed of record," but "was suspended pending final action on the case of Blanchard *v.* White *et al.,* following the rule,

That an application to enter, made after the date of judgment and within the time allowed for appeal, should be received, but not placed of record until the time for appeal has expired, or the rights of the entryman on appeal has been determined by this Department.

citing John H. Reed (6 L. D., 563) and cases following it.

While the case of Blanchard *v.* White *et al.* was pending on appeal here, and before it was decided (13 L. D., 66), White on November 29, 1890, relinquished his homestead entry to said tract, and Murphy was allowed to make homestead entry thereof. The decision complained of held that action of the local office to be erroneous; that on White's relinquishment the pending application of Holt should have been placed of record, and your office decision of September 11, 1891, rejecting Holt's application, was modified in this:

That inasmuch as Murphy's entry is of record, he will be allowed thirty days from date of notice of this decision to show cause why his entry should not be cancelled, and Holt's application placed of record.

The grounds upon which that decision is attached by the motion for review are substantially as follows:

It is alleged *first* that said decision is erroneous, in this—that as a matter of fact Holt's application filed March 11, 1890, was not "suspended" as stated in said decision, but that it was *rejected* by the local office, that service of notice of said rejection and of his right of appeal in thirty days therefrom was acknowledged in writing, by Briesen, Holt's attorney in fact, and that an inspection of the indorsements on the original application of Holt, will disclose these facts: that Holt never appealed from the alleged rejection of his application, and hence lost all his rights in the premises and that after the local office had rejected his application they had no right to hold it in suspense. And in support of this contention there is filed with the motion a copy of Holt's application with the indorsements thereon. The original application of Holt, filed with the papers in the case of

Blanchard *v.* White *et al., supra,* Has the following indorse-
36 ments on the back thereof, except the numbers, which are mine, and are placed there for convenient reference—

1. Holt. No. —. Received for filing Mar. 11—1890 at Guthrie Land Office, Ind. Ter.

2. Presented March 11, 90. Held in suspense during right of appeal of entryman and contestants, Blanchard and Cook Ewers White and for consideration of pending prior adverse claims, and *and* applications to enter.

3. [Rejected for conflict with H. E. No. 6, made April 23rd 1889 by Ewers White. See Con. Dec. 13—459—515. Thirty days for appeal.]* Fees tendered. Fees tendered.

C. M. BARNES, *Rec'r.*
C. B. B.

The indorsement indicated by the figure 1 is made from a red ink stamp, except the word "Holt" which is written in pencil. The indorsement indicated by the figure 2 is in pencil; that indicated by the figure 3 is in ink, and has pencil marks drawn diagonally across it in the shape of a letter "X," apparently with the intention of cancelling all of it except the words "Fees tendered," and the signature of the receiver. If that were the intention, it would leave the uncanceled indorsement at "2" as the apparent action of the local office, with the signature of the receiver attached thereto.

There is also this indorsement on the back of said application—

I acknowledge service of notice of the rejection of the within application and of my right of appeal within 30 days from March 11 1890. Julius V. Briesen.

It would appear from these indorsements that when the application was presented by Briesen the indorsement indicated at "32" was placed on the back thereof by the receiver, and that Briesen,
37 believing that to be the action of the local office promptly acknowledged service of notice thereof. But there is no evidence in the record anywhere that the register ever concurred in that action of the receiver, as required by Rule 66, Rules of Practice. Indeed, the evidence is that the joint action of the local officers was as indicated by the indorsement at No. "2." The letter of the local officers, dated April 11, 1890 on file in the case of Blanchard *v.* White, *supra,* gives the status of said tract at that date, and transmits to your office for its consideration and instruction in relation thereto the application of Holt, and other papers, and contains this statement—

On March 11—90 Levi Holt, by agent, tendered a soldier's statement which we hold in "suspense" pending right of appeal of entryman and contestants and for consideration of pending prior adverse claims and applications to enter.

This letter signed by the register and receiver shows conclusively

[*Words and figures enclosed in brackets erased in copy.]

what their joint action on said application was. The reasonable conclusion as to the indorsement at "3," then, is that the receiver, after making it, discovered, on consultation with the register, the error, and that it was canceled, as indicated by the pencil marks drawn across it, and that the indorsement at "2" in pencil was then made.

There is no statement or suggestion on their letter of April 11, *supra,* that the application was ever rejected by them. The uncanceled indorsement in pencil on the back of said application corresponds with the statement of the register and receiver in their report, and your office decision of Sep. 11, 1890, and of January 18, 1893, both declare that said application was 'suspended.' Indeed, the record evidence is so uniform and overwhelming on that point, that in my judgment, it removes the question from discussion, and renders that ground on which the motion for review is based untenable.

It is further urged in said motion that Holt's motion for review of your office decision of September 11, 1891, rejecting his application and his appeal from said decision were both filed out of time.

38 By letter of January 30, 1892, the local office at Oklahoma City, notified your office that on October 26, 1891, notice of your office decision of September 11, 1891, had been mailed to Briesen, at Guthrie, Oklahoma Territory, by registered letter, but had been returned to the local office unopened, and that on December 4, 1891, (instead of December 7, 1891, as stated in the motion,) Holt had filed a motion for review of said decision.

Notice of your office decision of September 11, 1891, having been transmitted by the local office through the mails, Holt had forty days from October 26, 1891, in which to file his motion for review. (Rogers *v.* Herrington, 17 L. D., 295.) He filed it on December 4, 1891, which was the 39th day of the period within which it should have been filed, and hence was in time.

Your office, on April 16, 1892, denied his motion for review. On May 17, 1892, he received notice of that action, transmitted by the local officers through the mails. When notices of your office decision are so transmitted, five days additional are allowed for the transmission of the notice and five days additional for the return of the appeal. (Rule 87, Rules of Practice.) Excluding from the time allowed for appeal the time consumed by the motion for review, we find that on May 17, 1892, when notice of your decision denying said motion was received, thirty-nine days of the seventy allowed for appeal and transmission thereof had passed. None of these thirty-nine days, however, were carved out of the additional days allowed for filing the motion for review, as held in Rodgers *v.* Herrington, *supra.* The seventy days allowed Holt in which to appeal, included ten days additional granted under Rule 87 of Practice. It is evident, therefore, that if the thirty-nine days be deducted from the seventy, it in effect robs Holt of the ten additional days granted by Rule 87, in which to file his appeal, and would be in direct opposition to the express terms of that rule. I am decidedly of the opinion

39 that the additional ten days allowed for the filing of a motion for review is entirely separate and distinct from the ten days

allowed for filing an appeal. Deducting the thirty-nine days from seventy left thirty-one days. The additional ten days allowed under Rule 87, *supra,* extended the time in which his appeal should be filed to forty-one days from May 17, 1892. He filed it on June 23, 1892, or on the thirty-seventh days of the period within which it should be filed, and was therefore in time.

Hence the allegation that the motion for review and appeal were not filed in time is also untenable, and cannot be sustained.

But it is contended that Holt's appeal was not filed in the General Land Office until April 21, 1894, more than two years after receipt of notice of your office decision of September 11, 1891. Admitting that allegation, it was not through any fault of Holt's that the filing of his appeal in the General Land Office was delayed but through the carelessness and neglect of the local officers, and he cannot be held to have lost any rights through their neglect, when he is guilty of no laches himself.

But it is further alleged as a ground for the review of the decision complained of that at the time Holt filed his application to enter the tract here involved, to-wit: on March 11, 1890, there was pending in your office his appeal from a rejection by the local office at Guthrie of an application of his made August 31, 1889, to enter another and different tract from that here involved. That on April 19, 1890, there was filed in the local office what purported to be a withdrawal of said application and a dismissal of said appeal by Holt. That on May 3, 1890, Holt made an affidavit and filed it in the local office in which he stated that the pretended withdrawal of his application to enter and dismissal of his appeal was a forgery, and that he *had not withdrawn* his application to file on said land. It is further shown that on January 16, 1891, your office sustained Holt's appeal and allowed him thirty days in which to make entry of the tract embraced in his first application. But it is not shown, nor asserted, that he ever did make entry of said tract.

It is earnestly contended by counsel for Murphy that Holt's affidavit of May 3, 1890, is conclusive evidence of the fact that he had not abandoned his first application nor his appeal from its rejection, and that he was seeking to speculate on his homestead right as a soldier, and that hence his application of March 11, 1890, was in bad faith as his affidavit of May 3, 1890, with reference to his former filing shows.

It will be observed that the last question is an entirely new one; that it has never been in the case before, and is wholly outside the record on which the case was originally decided.

It is insisted by Murphy's counsel, however, that it may be considered here; that the Department may, on review, consider any material question which, it appears from the record, was not considered in the original disposition of the case, and they refer to Hemsworth *v.* Holland (8 L. D., 400); Pueblo of San Francisco (5 L. D., 483, 494); Northern Pacific R. R. Co. *v.* Bass (14 L. D., 443).

Those cases are not in point. The first and last ones hold in motion for review. And the second case cited does not touch on the question here presented, but incidentally treats of the powers and

jurisdiction of the land department. The principal questions there involved being whether or not a patent issued to the city of San Francisco could be recalled, and whether one Secretary of the Interior could reverse the decision of his predecessor. However, in the case of Haling *v.* Eddy (9 L. D., 337), it is squarely held

That review will not lie for the consideration of a question not in issue when the original decision is rendered. See also United States *v.* Montgomery *et al.*, on review (12 L. D., 503).

Unquestionably, this matter is one for Murphy to present in the showing to be made by him, why his entry should not be cancelled, and Holt's placed of record. For the reasons stated, therefore, Murphy's motion for review is denied.

Since the consideration of the motion for review filed by
41 Murphy, there has also been filed a motion by McMichael to review said Departmental decision of February 25, 1895. He alleges nine errors in said decision, as a basis for his motion for review. He alleges, among other things, that his application to enter said tract, filed in the local office with his protest on August 31, 1889, was pending there at the date White filed his relinquishment, and that under the rule laid down in the decision complained of, with reference to Holt's application, his application should have been placed on record instead of Holt's, because first filed, and he alleges that the Department did not pass on that point in the decision complained of. By reference to the next to the last paragraph of that decision, it will be seen that the very point here raised was passed on. But it might be added to what is there said, that his (McMichael's) application to make entry was filed at a time when the tract in question was still segregated by White's entry, and that no rights could be acquired by an application at that time. Holt's application, on the contrary, was filed at a time when, under the rulings of the Department, it might be received and held subject to the rights of the entryman on appeal, or of the preferred rights of the contestant.

He also insists that when Holt filed his application, he was residing on the land, and that while under such residence and settlement gave him no rights as against White or the United States, they did, as *as* against every one else, including Holt. The rule in such cases is that the rights of a settler residing on the land conered by an entry attached *instanti*, on the cancellation of the entry, as stated on the decision sought to be reviewed. But they attach only where he is *is* in possession of the tract when the entry is canceled (see decision). And as McMichael was not in possession of said tract when White's entry was canceled on his relinquishment, he acquired no rights by being on the land when Holt filed his application, as against Holt or any one else.

He also insists that he never received any notice of Holt's appeal from your office decision of September 11, 1891. The appeal
42 filed by Holt has the affidavit of his attorney attached that he had, by registered letter, mailed a true copy of said appeal and specification of errors and argument to both McMichael and Murphy, and also attached thereto are two post-office receipts, one

showing that registered letter No. 1004 was received June 23, 1892, addressed to Hon. Samuel Murphy, Oklahoma, Oklahoma Territory, and the other showing that registered letter No. 1005 had been received, addressed to W. F. McMichael, of the same place.

This is sufficient evidence of service of notice of said appeal and specification of errors and argument thereon (see Rules 94, 95, and 96, Rules of Practice).

He also urges as against Murphy that he never appealed from the decision of your office of September 11, 1891, holding that his entry was illegally allowed, and had never complied with the order made in that decision to show cause why his entry should not be canceled, and McMichael allowed to enter the land. The hearing ordered by that decision rendered an appeal by Murphy, from the holding that his entry was illegally allowed, unnecessary, to preserve his rights. The result of that hearing showed that McMichael had no rights that impaired the validity of Murphy's entry, and it was held intact, as stated in the decision complained of.

He also stated that at the date the decision sought to be reviewed was rendered, to-wit, February 25, 1895, Levi Holt was dead, and that there is no law in existence that warrants or authorizes the substitution of his heirs in these proceedings. It has been held frequently by the Department "that an application to enter is are concerned." Goodage *v.* Olney (12 L. D., 324), Samuel J. Haynes (*Id.*, 645). This rule has been held to apply only in cases where the involved was subject to entry, and the application had been improperly rejected. See Goodale *v.* Olney, review (13 L. D., 498); Maggie Laird (13 L. D., 502). But when Holt filed his application it was properly filed under the rules of the Department, as stated in said decision, and was held in abeyance, as therein stated,
43 and when White's relinquishment was filed, November 29, 1890, the failure of the local office to place Holt's application of record was in effect a wrongful rejection of it, and brings him squarely within the rule laid down in the last two cases cited. If, then, his application was equivalent to an entry, so far as his rights were concerned, Holt's death does not prevent the substitution of his heirs in these proceedings. It needs no citation of authority to establish the proposition that where an entryman dies before completing his entry, his heirs may make final proof and payment, and patent shall issue to them. Holt's heirs stand in the same position as though his entry had been of record, unless the showing to be made by Murphy shows Holt to have been disqualified when his rights attached under his application.

The other question presented by the motion were either fully considered in the decision complained of, or were identical with those presented by Murphy's motion, and hence will not be further considered here.

McMichael's motion for review is also denied, with instructions that if Holt be indeed dead, his heirs may be substituted in these proceedings in his stead.

44 UNITED STATES LAND OFFICE,
OKLAHOMA, O. T., *June* 14, 1897.

In the Matter of the Preference Right of the Heirs of Levi Holt, Deceased, to Enter the S. W. ¼ of Sec. 27 Twp. 12 N. R. 3 W. I. M.

Waiver of Right of Entry.

Come now the heirs of Levi Holt, deceased, by their attorney of record, C. W. Ransom, and hereby waive their right to perfect the right of said heirs to make homestead entry of the S. W. ¼ Sec. 27, Twp. 12 N. of R. 3 W. I. M., said right to make entry being accorded said heirs by the Honorable Secretary of the Interior Department in the case of the Heirs of Levi Holt *vs.* Samuel Murphy, and ask on behalf of said heirs to withdraw all claims to said tract of land, this instrument being in consideration of the receipt of $2,000 to them in hand paid, by the said Samuel Murphy.

C. W. RANSOM.

Subscribed and acknowledged before me this 14th day of June, 1897.

B. M. DILLEY, *Register.*

Ex. "B."

45 Ex. "C."

United States to Samuel Murphy.

THE TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

The United States of America to all whom these presents shall come, Greeting:

Homestead Certificate No. 2764.

Application 223.

Whereas There has been deposited in the General Land Office of the United States a certificate of the Register of the Land Office at Oklahoma, Oklahoma Territory whereby it appears that, Pursuant to the act of Congress approved the 20th day of May, 1862, to secure homesteads to actual settlers on the public domain and the acts supplemental thereto, the claim of Samuel Murphy has been established and duly consummated in conformity to law for the southwest quarter of section twenty-seven in township twelve North of range three west of Indian Meridian containing one hundred and sixty acres according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor General:

Now know ye, that there is therefore granted by the United States unto the said Samuel Murphy, the tract of land above described;

to have and to hold the said tract of land, with the appurtenances thereof unto the said Samuel Murphy, and to his heirs and assigns forever.

In testimony whereof, I, William McKinley, President of the United States of America have caused these letters to be made patent, and the seal of the General Land Office to be hereto affixed.

Given under my hand at the City of Washington, the nineteenth day of January in the year of our Lord One thousand eight hundred and ninety eight, and of the Independence of the United States the one hundred and twenty-second.

46 By the President, WILLIAM McKINLEY,
[SEAL.] By J. F. McKENNA, *Secretary.*

C. H. BRUSH,
Recorder of the General Land Office.

Endorsed: The Territory of Oklahoma, Oklahoma County. Entered in numerical index and filed for record in the Register of Deeds' office of said County, the 25th day of January, 1898, at 1:45 o'clock P. M. and recorded in Book 13 of Patents on page 299. J. McKee Owen, Register of Deeds. By Alf. J. Whitman, Deputy.

Ex. "D."

This indenture, Made this 27" day of July A. D. 1897, between Samuel Murphy, and Louisa Murphy, husband & wife of Oklahoma county, in the Territory of Oklahoma, of the first part, and Ferdinand Batchelder, of Noble County, in the Territory of Oklahoma, party of the second part:

Witnesseth, That said parties of the first part in consideration of the sum of ($2000.00) Two thousand and no/100 Dollars, the receipt whereof is hereby acknowledged, do by these present, grant, bargain, sell and convey unto said party of the second part his heirs and assigns, all the following described real estate, situated in the County of Oklahoma Territory of Oklahoma, to-wit:

The North half (N. ½) and S. W. ¼ of the South West Quarter (S. W. ¼) Section No. Twenty-seven (27) in Township No. Twelve (12) N. of Range No. Three (3) West Meridian, containing 120 acres more or less according to the Government survey.

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, forever.

And said Samuel Murphy, and Louisa Murphy, for themselves heirs, executors and administrators, do hereby covenant, promise and agree to and with said party of the second part, that at the time of the delivery of these presents they are lawfully seized in their own right of an absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted and described premises, with all the appurtenances; that the same are free, clear, discharged and unincumbered of and from all former and other

grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature or kind whatsoever:

47 Except right of way A. T. & S. Fe Ry. Co., along the west line of said land, and that they will warrant and forever defend the same unto said party of the second part his heirs and assigns, against said parties of the first part their heirs, and all and every person or persons whomsoever lawfully claiming or to claim the same.

In witness whereof The said parties of the first part have hereunto set their hand the day and year first above written.

SAMUEL MURPHY.
LOUISA MURPHY.

Endorsed.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

Before me, Jean H. Everest, a Notary Public in and for said County and Territory, on this 4 day of August 1897, personally appeared Samuel Murphy, and Louisa Murphy, husband and wife and to me known to be the edentical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above set forth.

JEAN H. EVEREST,
Notary Public.

[SEAL.]

My Commission expires January 11, 1899.

Warranty Deed.

From Samuel Murphy & Wife to Ferdinand Batchelder.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

This instrument was filed for record on the 25 day of Jan'y 1898 at 9:25 o'clock A. M., and duly recorded in Book 14 on page 49.

Fees, $1.00 p'd.

J. McKEE OWEN,
Register of Deeds,
By ALF. T. WHITMAN,
Deputy.

[SEAL.]

48 Ex. "E."

This Indenture, Made this 24th day of January A. D. 1898, between Samuel Murphy and Louisa Murphy of Oklahoma County, in the Territory of Oklahoma parties of the first part and Ewers White of Pottawatomie County in the Territory of Oklahoma part of the second part,

Witnesseth, That the said parties of the first part, in consideration of the sum of Three Thousand Three Hundred and Fifty Dollars,

receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, all of the following described real estate, situated in the county of Oklahoma and territory of Oklahoma, to-wit: The west half ½ and the north east quarter of the south west quarter of section twenty seven (27) township twelve (12) N. of range 3 west.

To have and to hold the same together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, forever. And the said Samuel Murphy and Louisa Murphy his wife and for their heirs, executors, administrators does hereby covenant, promise and agree to and with parties of the said second part, that at the delivery of these presents that they are lawfully seized in their own right of an absolute and indefeasible estate of inheritance on fee simple of and in all and singular the above granted and described premises, with the appurtenances; that the same are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature or kind soever, except a mortgage of $2,000 dated June 14, 1897, executed to J. H. Wheeler by the said parties of the first part and that they will warrant and forever defend the same unto the said party of the second part his heirs and assigns against said parties of the first part, their heirs, and all and every person or persons whomsoever lawfully claiming or to claim the same, except the incumbrances aforesaid.

49 In witness whereof the said parties of the firs- part have hereunto set their hands the day and year first above written.

SAMUEL MURPHY.
LOUISA MURPHY.

TERRITORY OF OKLAHOMA, *County of Oklahoma, ss:*

Before me John Holzappel a notary public in and for the above named county and territory, on this 24th day of January, 1898, personally appeared Samuel Murphy and Louisa Murphy to me known to be husband and wife and after the within instrument was read to said Samuel Murphy and Louisa Murphy and the contents fully explained to Louisa Murphy they executed the above conveyance of land to me known or proven to be the homestead of the grantors and each for themselves acknowledged the execution thereof to be their free and voluntary act for the purposes named.

Witness my hand and official seal, the day above written.

[SEAL.] (Signed) JOHN HOLZAPPEL,
Notary Public.

My commission expires June 7, 1899.

Endorsed.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

From Samuel Murphy and Wife to Ewers White.

I hereby certify, that this instrument was filed for record in my office at 7:30 o'clock A. M. January 25, A. D. 1898.

J. McKEE OWEN,
Register of Deeds,
By ALF T. WHITMAN, *Deputy.*

50 Ex. "F."

Quitclaim Deed.

This indenture made this 12th, day of May in the year one thousand eight hundred and ninety nine, between Ferdinand W. Batchelder, of Ponca City, Oklahoma Ter. of the first part and Ewers White.

Witnesseth: That the said party of the first part in consideration of the sum of Fifteen Hundred dollars, to him duly paid the receipt whereof is hereby acknowledged, remised released and quit claimed, and by these presents do- for himself, his heirs, executors and administrators remise release and forever quit claim, unto the said party of the second part, and to his heirs and assigns forever, all his right, title interest estate, claim and demand, both at law and in equity, of in and to all of that certain tract of land situate in Oklahoma Territory known and described as the North one half of the South west one-fourth of section twenty seven and south west one-fourth of south west one-fourth of section twenty-seven of Township Twelve North of Range Three West of Indian Meridian, being the interest received by deed from Samuel Murphy, and Wife deeded July 1897.

Together with all and singular hereditaments and appurtenances thereunto belonging. To have and to hold the above described premises unto the said Ewers White, heirs and assigns, so that neither he the said party of the first part or any person, in his name and behalf shall or will hereafter claim or demand any right or title to the said premises or any part thereof; but they and every one of them shall by these presents be excluded and forever barred.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

I. R. Stamp 50 cents.

FERDINAND W. BATCHELDER.

STATE OF MISSOURI, *County of Jasper, ss:*

Before me a Notary Public in and for said County and State on this 12" day of May 1899 personally appeared Ferdinand W. Batchelder, to me known to be the identical person, who executed the within and foregoing instrument and acknowledged to me that he

executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and notarial seal the day and year above set forth.

[SEAL.] JOHN C. KEENAN,
Notary Public.

My commission expires Oct. 31st, 1901.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

This instrument was filed for record this 22, day of May A. D. 1899 at 2:30 o'clock P. M. and recorded in book 13 page 550.

[SEAL.] C. J. BOWMAN,
Register of Deeds.

(Copy.)

51 Ex. "G."

This Indenture, Made this 13th day of May A. D. 1899 between Ewers White and Mae White husband and wife of Pottawatomie County in the Territory of Oklahoma of the first part, and A. H. Classen of Oklahoma County, in the Territory of Oklahoma of the second part.

Witnesseth, That said parties of the first part in consideration of the sum of twenty five hundred dollars the receipt of which is hereby acknowledged do by these presents grant, bargain, sell and convey unto the said parties of the second part, their heirs and assigns all the following described real estate, situated in the county of Oklahoma and territory of Oklahoma, to-wit: The west half of the south west quarter and the north east quarter of the south west quarter of section twenty seven in township twelve north of range three west of Indian Meridian containing one hundred and twenty acres more or less.

To have and to hold the same, together with all and singular the tenements, heriditaments and appurtenances, thereunto belonging, or in any wise appertaining, forever.

And said Ewers White and Mae White for their heirs, executors and administrators do hereby covenant, promise and agree to and with said parties of the second part: That at the time of the delivery of these presents they are lawfully seized in their own right of an absolute and indefeasible estate of inheritance in fee simple of and in all and singular the above granted and described premises with all the appurtenances; that the same are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances of what nature or kind so ever: and that they will warrant and forever defend the same unto said party of the second part his heirs and assigns, against said parties of the first part, their heirs and all and every person or persons whomsoever lawfully claiming or to claim the same.

In witness whereof, the said parties of the first part have hereunto set their hands the day and year first above written.

EWERS WHITE.
MAE WHITE.

52 TERRITORY OF OKLAHOMA, *Pottawatomie Co., ss:*

Before me, L. B. Heliker, a notary public in and for said county and territory, on the 13th day of May, 1899, personally appeared Ewers White and Mae White husband and wife to me known to be the identical persons who executed the above and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the use and purposes herein set forth.

Witness my hand and official seal the day and year above written.

[SEAL.] L. B. HELIKER.

My commission expires October 12, 1902.

(Revenue stamp Indorsed E. W. 5-13-97 $2.50.)

And afterwards to wit; on the 18th day of November 1902, A. H. Classen filed his separate answer which is in words and figures as follows:—

53 In the District Court of the Third Judicial District Within and for Oklahoma County, Territory of Oklahoma.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY and A. H. CLASSEN, Defendants.

Separate Answer of Defendant A. H. Classen.

Comes now the above named defendant A. H. Classen, and having withdrawn the demurrer heretofore filed by leave of the Court files and makes this his separate answer to the petition of the plaintiff as follows:

I. That this defendant denies each and every allegation and averment of the plaintiff's petition except such as are hereinafter specifically admitted.

II. This defendant specifically admits that he was at the time this action was brought the owner in fee simple of the West half and the North-east quarter of the said South-west quarter of section Twenty-seven in Township twelve North of Range three West (W. ½ and the N. E. ¼ of S. W. ¼-27-12-N. 3, W. Indian Meridian) Oklahoma County Territory of Oklahoma, being one hundred and twenty acres (120) of the quarter section described in plaintiff's petition. And defendant hereby specifically denies each and every allegation of fraud made and charged in plaintiff's petition, and that said allegation are wholly false and untrue, and defendant alleges that he is

an innocent purchaser for value without any notice of knowledge of claims or equities which the said plaintiff hereby claims to have.

Wherefore; the defendant prays that upon the hearing of said case the said suit be dismissed at the costs of the plaintiff.

ANTON H. CLASSEN, *Defendant,*
By J. H. EVEREST, *Attorney.*

54 Endorsed: Number 3021 in the District Court Oklahoma County Territory of Oklahoma, Amelia M. Holt, plaintiff *vs.* Samuel Murphy *et al.* defendants. Separate answer of Anton H. Classen defendant. Filed in the District Court of Oklahoma County November 18th 1902 B. D. Shear, Clerk By I. M. Holcomb, Deputy.

And afterwards to wit; on the 18th day of November 1902 Samuel Murphy filed his separate answer which is in words and figures as follows:—

In the District Court of the Third Judicial District Within and for Oklahoma County, Territory of Oklahoma.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY and A. H. CLASSEN, Defendants.

Separate Answer of Defendant Samuel Murphy.

Comes now the above named defendant Samuel Murphy, and having withdrawn the demurrer heretofore filed, by leave of the Court files and makes this, his separate answer to the petition of the plaintiff as follows:

I. That this defendant denies each and every allegation and averment of the plaintiff's petition, except such as hereinafter specifically admitted.

55 II. Defendant admits that he acquired title to the South-west quarter of section twenty-seven township twelve North of range three West (S. W. ¼-27-12-N. 3-W. Indian Meridian) Oklahoma county, Territory of Oklahoma, under the homestead laws of the United States, and that at the time said action was commenced this defendant was the owner of part of the South-west quarter of said South-west quarter of section twenty-seven (27) aforesaid.

Wherefore, the defendant prays that upon the hearing of said case the said suit be dismissed at the costs of the plaintiff.

SAMUEL MURPHY, *Defendant,*
By J. H. EVEREST, *Attorney.*

Endorsed: Number 3021 in the District Court Oklahoma County, Territory of Oklahoma, Amelia M. Holt *vs.* Samuel Murphy *et al.*, defendants. Separate answer of Samuel Murphy. Filed in the District Court of Oklahoma County November 18th 1902. B. D. Shear, Clerk By I. M. Holcomb.

In the Supreme Court of the Territory of Oklahoma in Vacation.

Whereas, it has been made to appear that a change of Judge has been ordered in a number of causes now pending in the district court of Oklahoma County, in the Third Judicial District, and that the Hon. B. F. Burwell, presiding Judge of said Court is disqualified from trying said causes, and it further appearing that said presiding Judge will be absent from his district on official business during the present term of the district court of said county,

It is now hereby ordered that Hon. C. F. Irwin, Associate Justice of the Supreme Court of the Territory of Oklahoma, be and he is hereby designated to try, hear and determine any of
56 said causes now pending in the district court of Oklahoma County, wherein a change of judge has been ordered, and he is further designated to hold the district court of the said Third Judicial District during the absence of the regular presiding judge from his said district, and to try, hear and determine all matters which may properly come before said Court or Judge.

It is further ordered: That the clerk transmit a duly certified copy of this order, attested by his official signature and the seal of said Supreme Court, to said Associate Justice Irwin, the Clerk of the Second Judicial District of said Territory, and the district courts of said Third District.

In witness whereof I have hereunto set my hand this 23rd day of April, 1903.

[SEAL.] JNO. H. BURFORD,
Chief Justice.

Attest:
BENJ. F. HEGLER,
Clerk Supreme Court.

In the Supreme Court.

UNITED STATES OF AMERICA, *Territory of Oklahoma, ss:*

I, Benj. F. Hegler, Clerk of the Supreme Court of the Territory of Oklahoma, do hereby certify that the above and foregoing is a full, true and complete copy of the order of the Chief Justice of said Supreme Court, made in vacation, on the twenty-third day of April, 1903, assigning Associate Justice Irwin to the Third District, as the same appears on file and of record in my office.

In witness whereof, I hereto set my hand and affix the seal of said Supreme Court, at Guthrie, this 24 day of April, A. D. 1903.

[SEAL.] BENJ. F. HEGLER,
Clerk Supreme Court.

Order assigning Judge Irwin to 3d District. Filed April 24, 1903. B. D. Shear, Clerk, by Will H. Clark, Deputy.

57 TERRITORY OF OKLAHOMA, *Oklahoma Sounty, ss:*

I, B. D. Shear, Clerk of the District Court in and for Oklahoma County, Territory of Oklahoma, do hereby certify the above and foregoing to be a full, true, correct and complete copy of the original order Assigning Judge Irwin to 3d District as the same appears on file and of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said Court this 9th day of December 1903.

[SEAL.] B. D. SHEAR,
Clerk, District Court,
By WILL H. CLARK, *Deputy.*

In the District Court of the Third Judicial District, in and for Oklahoma County, Territory of Oklahoma.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY and A. H. CLASSEN, Defendants.

Separate Motion of A. H. Classen, Defendant.

Comes now the defendant, A. H. Classen, by his Attorney, J. H. Everest, and hereby moves the Court for judgment upon the pleadings herein for the reason that said pleadings show that plaintiff has no cause of action against this defendant and ought not to recover herein.

A. H. CLASSEN,
Defendant,
By J. H. EVEREST,
His Attorney.

58 Filed Nov. 18, 1902.

Endorsed on Back: Holt *vs.* Murphy and Classen. Motion of Classen.

Filed in District Court, Oklahoma County, O. T., Nov. 18, 1902.
B. D. SHEAR, *Clerk,*
By J. M. HOLCOMB, *Deputy.*

In the District Court of the Third Judicial District in — for Oklahoma County, Territory of Oklahoma.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY and A. H. CLASSEN, Defendants.

Motion of Samuel Murphy, Defendant.

Comes now the defendant, Samuel Murphy, by his attorney, J. H. Everest, and hereby moves the Court for judgment upon the plead-

ings herein for the reason that said pleadings show that plaintiff has no cause of action against this defendant and ought not to recover herein.

SAMUEL MURPHY,
Defendant,
By J. H. EVEREST,
His Attorney.

Filed Nov. 18, 1902.
Filed in District Court, Oklahoma County, O. T., Nov. 18, 1902.
B. D. SHEAR, *Clerk,*
By J. M. HOLCOMB, *Deputy.*

Endorsed on Back: Holt *vs.* Classen and Murphy. Motion for Judgment by Def'ts.

And thereafter, to wit: on the 13th day of December, 1902, said motions for judgment on the pleadings, by said A. H. Classen and by Samuel Murphy, came on to be heard, and after hearing
59 argument of counsel, said motions and each of them were by the order of the court overruled, to which the defendants, A. H. Classen and Samuel Murphy, at the time excepted.

And afterwards to wit; on the 13th day of February 1903 A. H. Classen filed his separate amended answer which is in words and figures as follows:

In the District Court of the Third Judicial District in and for Oklahoma County, Territory of Oklahoma.

No. —.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY and A. H. CLASSEN, Defendants.

Separate Amended Answer of Defendant A. H. Classen.

Comes now the above named defendant, A. H. Classen, by leave of the Court first obtained, and files this his Separate Amended Answer to the Petition of the plaintiff, to-wit:—

First. That this defendant denies each and every allegation and averment contained in plaintiff's petition, except such as are hereinafter specifically admitted.

Second. Defendant admits that the copy of a decision of the Hon. Secretary of the Interior attached to Plaintiff's petition and marked Exhibit "A," is a true and correct copy of said decision in the case of McMichael *vs.* Murphy *et al.* affecting the tract
60 of land described in plaintiff's petition.

And the defendant says that the said Secretary of the Interior erred as a matter of law in holding and finding that Levi Holt or the heirs of Levi Holt could or did gain any right to the tract in controversy by the filing of the Soldier's Declaratory Statement

set out in said decision on the 11th day of March, 1890, for the reason that at said date said tract of land was segregated from the public domain by the homestead entry of Ewers White, made at the United States Land Office at Guthrie, O. T., on the 23rd day of April, 1889, and which entry was not cancelled until the 29th day of November, 1890, when said White relinquished said tract to the Government of the United States.

And said Secretary erred in awarding said tract of land to the heirs of said Levi Holt, deceased, and in holding the said entry of Samuel Murphy, the original patentee, for cancellation.

Third. And further answering said defendant alleges and says: That on the 14th day of June, 1897, one, C. W. Ransom, who was then and there the Attorney of Record for the Heirs of Levi Holt, Deceased, was duly notified of the said decision of the Hon. Secretary of the Interior awarding said land to the said Heirs of Levi Holt and allowing thirty days in which the said Heirs of Levi Holt should perfect said Soldier's Declaratory Statement by paying the fees and commissions, but that said Heirs of said Levi Holt never at any time offered to perfect said Soldier's Declaratory Statement or to enter said tract of land and never at any time settled upon, cultivated or improved said quarter section or any part thereof and never attempted at any time so to do. And that by reason of the said laches, defaults and failures of the said Heirs of said Levi Holt, deceased, said heirs lost any and all right, or pretended rights, in and to the said tract of land.

And the said Interior Department of the United States, acting through the Commissioner of the General Land Office, closed said case in favor of said Samuel Murphy and issued patent to said land to said Samuel Murphy.

Fourth. This defendant, further answering, says that after the Hon. Secretary of the Interior had rendered the decision set forth in plaintiff's Exhibit "A," the Commissioner of the General
61 Land Office gave Samuel Murphy thirty days within which to show cause why the entry of the said Samuel Murphy should not be cancelled for conflict with the alleged prior rights of the said Heirs of said Levi Holt, and thereupon the said Samuel Murphy applied to show cause why said entry should not be cancelled and a copy of said petition is hereto attached, marked Exhibit "A" and made a part of this amended answer. But the said Commissioner of the General Land Office refused and denied the said application and thereupon said Samuel Murphy filed his appeal on the 21st day of August, 1896, with the Hon. Secretary of the Interior Department. A copy of said appeal is hereto attached, marked Exhibit "B" and made a part hereof.

And the Hon. Secretary of the Interior thereupon rendered a decision on January 30th, 1897, adverse to said Sam'l Murphy a full and true copy of which said decision is hereto attached, marked Exhibit "C" and made a part hereof.

And thereupon the said Samuel Murphy filed his motion for review of said decision of the Hon. Secretary of the Interior on the

15th day of March, 1897. A full and true copy of which said appeal is hereto attached, marked Exhibit "D" and made a part hereof.

That on the 29th day of April, 1897, the Hon. Secretary of the Interior overruled said motion for review *proforma* and closed said case. A full, true and correct copy of said decision *of said decision* is hereto attached, marked Exhibit "E" and made a part hereof.

And this defendant says that there was error in all the conclusions and findings of the Hon. Secretary of the Interior adverse to said Samuel Murphy, and particularly, in finding that the petition of the said Murphy why his said entry should not be cancelled, was not sufficient, the same being good and sufficient, filed in time under the Rules of Practice of the Department and specifically pointing out facts which rendered the application of Levi Holt illegal and ineffective. And defendant avers that said Levi Holt nor his heirs gained any real rights or equities in and to said tract of land involved by reason of the erroneous conclusions of law on the part of
62 the Hon. Secretary of the Interior set out in the decision complained of.

Fifth. And further answering, defendant alleges and says that this defendant admits that Levi Holt died on or about the — day of May, 1893, as alleged in plaintiff's petition, and admits that the heirs of Levi Holt were ordered substituted by the Interior Department but defendant alleges that the substitution of the said heirs was error of law in this, that the said Heirs of Levi Holt never had any inheritable interest in said land for the reason that said Levi Holt never at any time had a homestead entry on said tract of land nor settlement or improvements thereon nor did he ever file a contest against said land and bring himself within the provisions of any of the laws providing for the descent of interests or equities in land of the United States subject to entry under the homestead laws and defendant says that the rights of the said Levi Holt, if any he had, did not survive but terminated with his death.

Sixth. Defendant, further answering, says that he admits that Amelia M. Holt is the widow of the said decedent, Levi Holt, but alleges that she is not the only heir of Levi Holt, but that the following persons are children and heirs of Levi Holt also, to-wit: George Holt, Minerva Manley, Ida Ransom, Levi Holt, Susan J. Holt, Edith Ranson, Earnest C. Holt, and Nellie May Holt. All of the heirs of the Levi Holt above named are over the age of 21 years, except Earnest C. Holt and Nellie May Holt, who are, as this defendant is informed and verily believes, minors.

And this defendant alleges that, said heirs are necessary parties to a final termination of this controversy and asks that they may be made parties defendant by order of the Court and be required to come into Court and show what interest, if any, they have in the tract of land involved.

Seventh. And further answering this defendant alleges and says that he was at the time this suit was brought, the owner in fee simple of the West one-half and the Northeast Quarter of the South-west Quarter of Section Twentyseven (27), Township Twelve (12)

North, Range Three (3) West of the Indian Meridian, in
63 Oklahoma County, Territory of Oklahoma. That defendant purchased the same of Ewers White for the good and valuable consideration expressed in the deed to this defendant attached to plaintiff's said petition and marked Exhibit "G," and defendant specifically denies that he was a party to any fraud, if any was perpetrated upon the plaintiff or any of the other heirs of Levi Holt, deceased, as alleged in said petition, but avers that he had no knowledge or notice of the fraud alleged to have been perpetrated by the said C. W. Ransom and that this defendant was an innocent purchaser for value after patent without notice or knowledge of any claims or equities on the part of plaintiff or any of the other heirs of said Levi Holt.

Wherefore, Defendant prays for an order making the Heirs of said Levi Holt, named in Paragraph Six (6), parties defendant and requiring them to answer herein and the Court appoint a Guardian *ad litem* for the said minors Earnest C. Holt and Nellie May Holt, and that upon final hearing hereof that the plaintiff's action be dismissed at her own costs and that a decree be rendered quieting the title and rights of this defendant in and to the One Hundred Twenty (120) acres of land owned by him against the said plaintiff and against the said George Holt, Minerva Manley, Ida Ransom, Levi Holt, Susan J. Holt, Edith Ransom, Nellie May Holt and Earnest C. Holt.

A. H. CLASSEN, *Defendant,*
By J. H. E., *His Attorney.*

Copy.
Endorsed filed February 13, 1903. B. D. Shear, Clerk.

EXHIBIT "A."

SAMUEL MURPHY
vs.
THE HEIRS OF LEVI HOLT, Deceased.

Petition Showing Cause why H. E. #223 of Samuel Murphy Should be Reinstated.

Comes now the above named Samuel Murphy and in compliance with the order of the Hon. Commissioner of the General
64 Land Office of February 20th, 1896, allowing him to show cause why his homestead entry No. 223 made November 29th, 1890 for the said S. W. ¼ Sec. 27, Twp. 12 N. R. 3 W. should be reinstated and the action cencelling the same be set aside, alleges and says:

First. Your petitioner shows that he was on the 14th day of April, A. D. 1896 duly served with the copy of Commissioner's letter "H" of February 20th, 1896 together with a citation allowing him within thirty days from said date of service to show cause why his said entry for said land should be reinstated.

Second. Your petitioner alleges that said entry should be reinstated and said order cancel-ing the same be annulled and vacated for the reason that no legal service of the decision of the Hon. Secretary of the Interior Department holding said entry for cancellation, was ever made upon said entryman Samuel Murphy or any person authorized to accept such service for him and that no citation whatever was served upon him prior to said cancellation, calling upon him to show cause why his entry should not be cancelled for conflict with the application of Levi Holt made March 11th, 1890 for a soldier's declaratory statement for said land.

Third. That the homestead entry of this petitioner should not be cancelled but should be reinstated for the reason that the S. D. S. application filed by Levi Holt on March 11th, 1890 at the U. S. Land Office at Guthrie, O. T. for the S. W. ¼ Sec. 27 Twp. 12 N. R. 3 W. was not made for the exclusive use and benefit of the said Levi Holt nor for the purpose of his actual settlement and cultivation. That said declaratory statement was filed for the purpose of speculation and sale and that the said Levi Holt did not take said land for a home for himself and that said application for an S. D. S. was therefore fraudulent, illegal and void from inception.

65 Fourth. That the said S. D. S. of the said Levi Holt for the land herein, is fraudulent, illegal and void for the further reason that at the date he made said application he had pending an application for an S. D. S. upon the S. E. ¼ Sec. 7 Twp. 11 N. R. 3 W., said application being made at Guthrie, O. T. on Sept. 2nd, 1889. That on April 19th, 1890 there was filed in the local land office what purported to be a withdrawal of said application and a dismissal of said appeal by Holt. That on May 3rd, 1890 Holt made an affidavit and filed it in the local office in which he stated in effect that he had not withdrawn said application but was prosecuting the same in good faith, and that on January 16th, 1891 the Hon. Commissioner of the General Land Office allowed the said Holt thirty days within which to make entry of the said S. E. ¼ Sec. 7 Twp. 11 N. R. 3 W., and your petitioner says that by the filing of said affidavit and the prosecution of said appeal for the said S. E. ¼ Sec. 7 Twp. 11 N. R. 3 W. the said Holt waived and abandoned his application for an S. D. S. upon the tract in controversy.

Wherefore, your petitioner prays that said order of cancellation may be revoked and annulled; that his homestead entry No. 223 for said land may be reinstated and may be declared to be a valid, subsisting entry upon said tract of land and that the application of said Levi Holt to file a declaratory statement for said land, may be rejected.

SAMUEL MURPHY.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

Personally appeared before me, the undersigned authority, Samuel Murphy of lawful age, who being duly sworn, deposes and says:

That he is the claimant in the above entitled action; that he
66 has heard read the within petition for re-instatement of entry and understands the contents thereof, and that the things and matters therein stated are true.

SAMUEL MURPHY.

Subscribed and sworn to before me this 16th day of April, 1896.

LESLIE P. ROSS, *Recr.*

I, J. H. Everest, do solemnly swear that I mailed a full, true and correct copy of the within petition for re-instatement, and accompanying affidavit, to Charles W. Ransom, Attorney for Levi Holt at Perry, O. T., by registered letter, said letter being sent on this 16th day of April, 1896, in further proof whereof affiant has hereunto attached the registry receipt for said letter.

J. H. EVEREST.

Subscribed and sworn to before me this 16th day of April, 1896.

LESLIE P. ROSS, *Rec.*

Registered { Letter. / Parcel.* } No. 155. Postoffice Okla.O. T., Received 4/16, 1896, from J. H. Everest, Okla.

{ Let. / Par.* } addressed CHARLES W. RANSOM, *Att'y, Perry, O. T.*

J. A. FLATTERY, *P. M.*, Per G.

5–2886.

This space is reserved on counterpart for particulars connected with despatch of registered piece.

Endorsed on back: Samuel Murphy *vs.* The Heirs of Levi Holt Deceased. Petition showing cause why H. E. # 223 of Samuel
67 Murphy should be reinstated. Filed at U. S. Land Office, Oklahoma, O. T., April 16, 1896. Leslie P. Ross Receiver. J. H. Everest, Att'y for Samuel Murphy.

96 44687–1.

[* Erased in copy.]

EXHIBIT "B."

Before the Honorable Secretary of the Interior Department, Washington, D. C.

SAMUEL MURPHY
vs.
THE HEIRS OF LEVI HOLT, Dec'd.

Involving H. E. No. 233 for the S. W. ¼ Section 27, Twp. 12 N., R. 3 West.

Appeal.

Comes now the above named entryman and homestead claimant, Samuel Murphy, by his duly appointed attorney, J. H. Everest of Oklahoma City, O. T., and hereby appeals from the action and decision of the Honorable Commissioner of the General Land Office herein, in holding his entry for cancellation and in denying him the right to a hearing, per letter "H" of July 10, 1896, hereby appeals to the Honorable Secretary of the Interior Department, Washington, D. C., and relies upon the following errors in said decision for a reversal of said judgment:

First. The Honorable Commissioner erred, in holding and finding that the "allegation that he (this claimant) was not served with notice to show cause why his entry should not be cancelled is not sufficient," said find and holding being error of law in this, that it plainly appears without contradiction that neither this appellant nor anyone authorized as his attorney had ever been served with a copy of said former decision until April 14, 1896.

Second. The Honorable Commissioner erred in holding
68 and finding that the charges made that Holt's application is speculative and fraudulent and that he had another application for land pending are too indefinite," said finding and holding being mistake of fact and error of law.

Third. The Honorable Commissioner erred in holding and finding "There is nothing in the allegations to warrant a hearing," for the reason that said charges, if proved, warranted the cancellation and dismissal of Levi Holt's declaratory statement for the land involved.

Fourth. The Honorable Commissioner erred in not holding and finding that the charge that application of Levi Holt was "not made for the exclusive use and benefit of the said Levi Holt nor for the purpose of his actual settlement and cultivation; that said declaratory statement was filed for the purpose of speculation and sale, and that said Levi Holt did not take said land for a home for himself, and that said application for an S. D. S. was illegal and void from inception," for the reason that said charge specifically stated a cause of action, as held in the case of George *vs.* Stroud (22nd L. D. 245).

Fifth. The Honorable Commissioner erred in holding and finding that the facts set up in the fourth paragraph of the said petition,

showing why this appellant's entry should not be canceled, was insufficient, for the reason that said paragraph shows that the said application of Levi Holt was speculative and fraudulent and not made in good faith, as he could not have two valid, pending applications for a soldier's declaratory statement and both of them be in good faith, and as he had made affidavit before the department that the application for the S. E. ¼ of sec. 7, tp. 11 N. of Range 3 West was made in good faith, it follows that the application for the tract herein involved which was pending at the same time could not have been made in good faith.

69 Sixth. The Honorable Commissioner erred in holding and finding that the heirs of Levi Holt had any rights under sections 2304 and 2305 of the Revised Statutes of the United States to complete the Soldier's Declaratory Statement or entry for the said Levi Holt, and erred in not holding and finding that the rights of the said Levi Holt abated with his death and that he left no right which could be perfected by heirs.

Seventh. The Honorable Commissioner erred in not holding and finding that the application of Levi Holt to make S. D. S. for the tract of land was a mere nullity and was incomplete and conferred no rights for the reason that the same was not accompanied by any non-sooner affidavit as required by law.

See case of Levi C. Kinner, decided by the Honorable Commissioner January 8, 1896; and also, case of Leffie W. Walk *vs.* William W. Beatty, decided by the Honorable Commissioner July 23, 1896. See also Lemmons *vs.* Williams, 19th L. D., p. 37.

Eighth. The Honorable Commissioner erred in holding that the heirs of Levi Holt be allowed to complete entry during the time allowed for Murphy to appeal from said action denying a hearing, and erred in not holding the application of the said Levi Holt in abeyance until said case was finally closed upon appeal or otherwise.

Wherefore, Appellant asks that said decision be in all things set aside and reversed; that the application of Levi Holt may be declared to be void for the reasons herein set out, or that a hearing may be ordered to allow this appellant an opportunity to establish the charges made by him against the application of the said Levi Holt.

Respectfully submitted,

J. H. EVEREST,
Attorney for Samuel Murphy.

70 TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

Personally appeared before me the undersigned authority, J. H. Everest of lawful age, who, being duly sworn, deposes and says:

That he mailed by registered letter on this 20th day of August, A. D., 1896, a full and true copy of the within appeal and specifications of errors to Messrs. Ransom & Bailey, att'ys for the heirs of Levi Holt, addressed to them at Perry, O. T., their postoffice address, in further proof of which mailing the registry receipt for such letter is hereto attached.

J. H. EVEREST.

Subscribed and sworn to before me this 20th day of August, 1896.
B. M. DILLEY, *Register.*

ed { Letter. / Parcel.* } No. 488. Postoffice, Okla., O. T. Received 8/20, 1896, from J. H. Everest, Okla., O. T.

376

a { Let. / Par.* } addressed RANSOM & BAILEY, *Perry, Okla.*

J. A. FLATTERY, *P. M.*,
Per G.

5–2886.

This space is reserved on counterpart for particulars connected with despatch of registered piece.

Exhibit "B."

Endorsed on back: Before the Hon. Secretary of Interior Department, Washington, D. C. Samuel Murphy *vs.* The Heirs of Levi Holt, Dec'd. Appeal. S. W. 27–12–3 west. Filed Aug. 21, 1896. B. M. Dilley, Register. J. H. Everest, Att'y for Samuel Murphy.

96 93290–2.

71 EXHIBIT "C."

F. L. C. P. J. C. P. J. C.

DEPARTMENT OF THE INTERIOR, B.
WASHINGTON, *January 30th*, 1897. G. B. C.

Vol. 24-431.
J. H. L.

SAMUEL MURPHY
v.
HEIRS OF LEVI HOLT.

Practice.

The Commissioner of the General Land Office.

SIR: The prior history of the tract involved in this appeal, the SW ¼ of Sec. 27, Tp. 12 N., R. 3 W., Oklahoma Land District Oklahoma Territory, and the connection of the several parties claiming the same, will be found in 20 L. D., 147, and 535. That part of the judgment of the Department which is material to the present controversy (*Id.*, 153) is as follows:

[* Erased in copy.]

Inasmuch as Murphy's entry is of record, he will be allowed thirty days from date of notice of this decision to show cause why his entry should not be cancelled, and Holt's application placed of record.

This decision was officially promulgated by your office July 5, 1895, and notice sent to three different attorneys of record in this city for Murphy; also, to the local office, where, on August 20, following, service of your letter of July 5, 1895, together with a copy of departmental decision of June 12, 1895, was acknowledged by A. B. Hammer, who signed himself as "attorney for Murphy."

On October 22, following, the local officers reported that notice had been served and no action had been taken by Murphy. Thereupon your office, by letter of November 1, 1895, directed the cancellation of his entry, and allowed Holt to perfect his.

On November 5, following, Murphy filed a motion for review of your office decision of November 1, 1895, alleging that he had never received a copy of the departmental decision of June
72 12, 1895, or of your order promulgating the same of July 5, "since the same was never served upon him in person, nor upon any attorney authorized to act for him," that no citation to show cause was issued or served upon him or his attorney, as required by your office letter of July 5, and that he has a good and sufficient defense and showing why his entry should not be cancelled.

Accompanying this motion are the affidavits of Murphy and Hammer. The former swears that he was never served with a copy of departmental decision of June 12, or of your office letter of July 5, 1895, transmitting said decision; that the acceptance by Hammer "of said letter and decision" is not binding on affiant, because Hammer was not and had never been the attorney for your affiant in said contest and case," and had never been authorized to appear or act for him; that no citation requiring him to show cause why his entry should not be cancelled was ever issued, as directed by your office, July 5, 1895, or served upon any person authorized to accept service for affiant.

Hammer says he has no recollection of accepting service of the departmental decision or your letter transmitting the same; "that if he did accept service of the same as attorney for Samuel Murphy, the same was done under a misapprehension and mistake," because he never entered a general appearance in the case as attorney for Murphy, was not authorized to appear for him, etc.; that he was employed by him to examine the records "in the local office in said case, and did so, but that this was the extent of his employment."

Your office by letter of February 20, 1896, says that:

It now transpires that said notice was served upon A. B. Hammer, as attorney for Murphy. Hammer makes affidavit that "he was not in fact the attorney for said Samuel Murphy, and was not authorized to appear for said Murphy in said case, nor to do or perform any act or acts in said case as the attorney for said Murphy." Murphy makes affidavit that Hammer was not his attorney in said

case and was never authorized to appear, act, or accept service for him.

73 Taking into consideration all the circumstances connected with this case, it is not deemed advisable at present to set aside and vacate said decision of November 1, 1895, and reinstate Murphy's entry upon the motion filed. He was never, as far as the record shows, properly notified that he would be allowed to show cause why his entry should not be canceled, and he now asks to be allowed to present his defense.

You will at once notify Murphy that he is allowed thirty days to show cause why the decision of November 1, 1895, cancelling said entry should be vacated and set aside, and his entry reinstated. Allow no further action toward the disposition of the land to be taken pending final adjudication of the case.

In pursuance of this order, Murphy filed his verified petition, praying that his entry "should be reinstated and the action cancelling the same be set aside," because (1) of the said order of your office; (2) because there was "no legal service" upon him, or on any person authorized to accept service for him, of the order cancelling his entry, and that no citation was served upon him prior to said cancellation; (3) that his entry should be reinstated, because the soldier's declaratory statement of Holt was not made for his exclusive use and benefit, or for actual settlement and cultivation, but for the purpose of speculation and sale; that Holt did not take the land for a home for himself, and his application, "was therefore fraudulent, illegal and void from inception:" and (4) that it was fraudulent, etc., for the reason that Holt had pending an application for another piece of land at the time he made this.

In support of this petition is presented the affidavits of A. B. Hammer and J. H. Everest, the latter Murphy's attorney in this proceeding. Hammer say he desires to add to his former affidavit that he was employed as attorney for Murphy for the sole purpose of examining the records "with reference to a former entry
74 by said Levi Holt;" "that if he ever accepted service of a copy of the decision in said case, he never informed" Murphy of it.

Everest says that he has been attorney for Murphy "ever since the promulgation of the decision of the Interior Department on appeal in" this case; "that the only reason why the showing as to why his entry should not be canceled was not immediately made by said Samuel Murphy prior to any service of said decision or order to show cause having been made on him," was because negotiations for settlement of the controversy were pending.

Your office, by letter of July 10, 1896, considered this controversy in its present aspect, and held that:

The allegation that he was not served with notice to show cause why entry should not be canceled is not sufficient, and the charges that Holt's application is speculative, and fraudulent, and that he had another application pending, are too indefinite. There is nothing in the allegations to warrant a hearing. The controversy over

this land has been pending since 1889, and has been before the Hon. Secretary three times.

The application of Murphy for a hearing is hereby denied.

From this decision Murphy appeals, assigning several grounds of error.

The only question involved in this appeal is, in my judgment, whether Murphy received legal notice of the former decision. If he did, then he is precluded from further prosecuting this matter, because he did not comply with the order of the Department.

An informal investigation of the old files of this long drawn out controversy shows, that no one entered appearance as attorney for Murphy in the local office in the first instance. This is probably accounted for by the fact that he is an attorney himself and conducted his own case in the local office. In your office, however, Dudly and Michener entered their appearance, in July 1892; James T. Hunter appeared for him in July, 1893, and Fred and F. M. Beall did the same in October, 1893. In March, 1895, there was a "petition for certification of record," filed in the local office, which was
75 signed as follows: "Samuel Murphy, by A. B. Hammer, his attorney." Upon the first three, on July 5, 1895, there was served notice of the departmental decision of June 12, 1895. These notices contained this: "Said departmental decision denied the motion for review of departmental decision of February 25, 1895, in favor of Holt. This case has been closed. Murphy will be ordered to show cause why his entry should not be cancelled for conflict with right of Holt." The notice of the local officers of the same date enclosed a copy of the decision of June 12, denying motions for review of departmental decision of February 25, 1895. This notice contained this: "Said case is accordingly closed. Notify the parties in interest. You will notify Murphy to show cause why his entry should not be canceled for conflict with Holt's S. D. S. directed by departmental decision dated February 25, 1895."

It was the receipt of this decision and notice that Hammer, as attorney for Murphy, accepted August 20, 1895. It does not appear by the record that notice was issued by the local officers required him to show cause why his entry should not be canceled, and this failure is alleged to be erroneous.

There is no force in this contention. The order of the Department was: "he will be allowed thirty days from date of notice of this decision to show cause," etc. This of itself was the order, and all that could be required was service of this decision on the entryman, and within thirty days he should be required to make his showing.

It will be observed that Murphy does not deny that he had knowledge of the decision. The most that can be said of his statement is that Hammer was not authorized to accept service for him, and that he was not personally served. The statement of Mr. Everest, as quoted above, is enough of itself to show that he—who was then acting as attorney for Murphy—and his client had knowledge of the order, and he assigns as a reason for not making the showing required, that there were negotiations pending looking to a settlement.

76 But, aside from this, the acceptance of service by Hammers was, in my judgment, binding on Murphy. He had appeared in the local office prior to that as attorney for Murphy, and so far as can be ascertained from the records herein the only one who ever acted in that capacity for him. His appearance was not limited or special, and he will not be heard now to claim that he had no authority to accept service of notice. The fact that he did so after having acted in the capacity of Murphy's attorney in the same controversy should estop him from afterwards attempting, even in the feeble manner he does here, to deny his authority. (Peacock *v.* Shearer's Heirs, 19 L. D., 211, same on review, 20 L. D., 213; Duncan *v.* Rand, 19 *Id.*, 354.)

It being determined that Murphy had legal notice and did not comply with the order to show cause, the other allegations, made as they were since the case was closed, cannot now be considered.

Your office judgment is therefore affirmed.

The papers transmitted with your office letter ("H") of September 10, 1896, are herewith returned.

Very respectfully,

DAVID R. FRANCIS, *Secretary.*

Endorsed on Back: Department of the Interior. Received. Doc. Mar. 24. No. 431. L. & R. R. Div.

EXHIBIT "D."

Before the Honorable Secretary of the Interior Department
Washington, D. C.

SAMUEL MURPHY
vs.
THE HEIRS OF LEVI HOLT.

Involving H. E. 223, for the S. W. ¼ of Sec. 27, Tp. 12 N., R. 3 W.

Motion for Review.

Comes now the above named claimant, Samuel Murphy, by his attorney of record J. H. Everest of Oklahoma City, O. T., and hereby moves the Honorable Secretary of the Interior Department, Washington, D. C., to review and reverse his decision herein of
77 January 30th, 1897, and assigns as reasons for said motion the following errors apparent upon the face of the record in said case.

First. The Honorable Secretary erred in holding and finding that the entry of this claimant for the land involved was properly canceled, for the reason that said entry was only held for cancellation for conflict with the alleged prior right of Levi Holt and his heirs, and the entry of Murphy should only have been canceled if, and when, the heirs of Levi Holt presented an application to homestead

said land at the local office at Oklahoma, O. T. It must be held that the entry was prematurely cancelled.

Second. The Honorable Secretary erred in holding and finding that the acceptance of service of the decision of July 5th, 1895, by an unauthorized person, was binding upon Samuel Murphy and concluded his right to make a defense of his entry against the fraudulent and illegal claim of the heirs of Levi Holt. No power of attorney as required by the Rules of Practice was ever given by Samuel Murphy to A. B. Hammer, nor is there anything of record signed or done by Samuel Murphy which could be construed into an appointment of A. B. Hammer as his attorney, and both the said Hammer and the said Murphy deny such attorneyship. It is palpable error to hold such a relaxation of attorney and client existed, in the absence of any evidence to that effect, and in the face of the sworn statements of both these parties.

Third. The Honorable Secretary erred in holding that the fact that J. H. Everest, the then attorney for Samuel Murphy, had actual knowledge that a decision had been received at the Oklahoma City Land Office in said case, amounts to a legal service of notice of said decision so as to deprive the claimant Murphy from making a defense and showing the fraudulent and illegal character of the claim of Levi Holt and his heirs.

Fourth. The Honorable Secretary erred in not holding that the allegations made concerning the illegality of the application of Levi Holt were sufficient to order a hearing to determine the truth
78 thereof and that said allegations if proved warranted the rejection of the claim of the said heirs of Levi Holt and the holding intact the entry of Murphy.

Fifth. The Honorable Secretary erred in not holding that the notice served upon A. B. Hammer as the alleged attorney of Murphy was illegal and therefore void for the reason that Hammer was not in fact such attorney, and erred in holding that Murphy did not comply with the order to show cause why his entry should not be conceled within the time allowed, and erred in affirming the judgment of the Commissioner of the General Land Office denying Murphy's motion for review.

Sixth. The Honorable Secretary erred in not holding and finding that Levi Holt never had any valid or legal claim to the tract in controversy for the reason that his application was made when said land was segregated by the homestead entry of White. And it is decided in the case of Cowles *vs.* Huff, *et al.* (24th L. D., p. 81), that an application made after a judgment of cancellation but before the same becomes final is null and void and should not be accepted until the rights of the entryman have been fully determined.

If the law laid down in Cowles *vs.* Huff *et al.*, is *the law*, your Honor should, in the exercise of his supervisory authority and to do justice to this claimant, reverse and vacate the decision of February 25th, 1895, holding that Holt ..... rights by such application, and should reject the claim of Holt's heirs and reinstate the entry of Samuel Murphy. The Department should not arbitrarily deprive this claimant of his homestead upon a mere technicality in favor of

the heirs of Levi Holt, and to aid and encourage speculation in Government land, but should apply the law equally and give Samuel Murphy the benefit of this recent decision which controls and overruled the decision of February 25th, 1895, in the case of McMichael *vs.* Murphy *et al.*

Respectfully submitted,

J. H. EVEREST,
Attorney for Samuel Murphy.

79 TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

Personally appeared before me, the undersigned authority, Samuel Murphy, who, being duly sworn, deposes and says:

That he is the claimant in the above entitled motion and the movant for a review; that said motion is filed in good faith that justice may be done and not for the purpose of delay, that this affiant is still an actual and *bona fide* resident on the tract of land involved in this controversy and has a house, orchard, fencing, and cultivated lands, and other improvements, to the value of two thousand Dollars; that neither Levi Holt in his life time nor his heirs since his death have ever settled upon and improved said tract of land or any part thereof, and that said heirs have never appeared at the local office at Oklahoma City, O. T., and applied to perfect the pretended declaratory statement of the said Levi Holt.

That this affiant has expended in contesting for said land, in addition to the sums above set out expended for improvements, the sum of $800.50 Dollars, and has expended all of his available means and resources in improving said land and maintaining his claim to the same, and that the loss of said claim will mean financial ruin to this affiant.

SAMUEL MURPHY.

Subscribed and sworn to before me this 13th day of March, 1897.

B. M. DILLEY, *Register.*

Endorsed on back: Before the Honorable Secretary Interior Department, Washington, D. C. Samuel Murphy *vs.* The Heirs of Levi Holt Motion for Review. Filed this 15 day of March, 1897. B. M. Dilley Reg. J. H. Everest Attorney for Samuel Murphy.

1897-27329-1.

80 EXHIBIT "E."

F. L. C. P. J. C. P. J. C.

Vol. 24-431. DEPARTMENT OF THE INTERIOR, A. B. P.
W. V. D. WASHINGTON, *April* 29, 1897. B. G. B. G.

SAMUEL MURPHY
v.
HEIRS OF LEVI HOLT.

On Review.

The Commissioner of the General Land Office.

SIR: Motion for review of departmental decision of January 30, 1897, has been filed by Samuel Murphy. This controversy involves the S. W. ¼ of Sec. 27, tp. 12 N., R. 3 W., Oklahoma Land District, Oklahoma Territory.

On examination of this motion it is found that no new question of law or fact is suggested. The same is therefore denied, and the papers herewith returned.

Very respectfully, C. N. BLISS, *Secretary.*

Endorsed on Back: No. 3021 Amelia M. Holt *vs.* Samuel Murphy and A. H. Classen Separate Amended Answer of A. H. Classen Def't. Copy.

81 And afterwards to wit: on the 13th day of February 1903 Samuel Murphy filed his separate amended answer which is in words and figures as follows:

In the District Court of the Third Judicial District in and for Oklahoma County, Oklahoma Territory.

Case No. —.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY and A. H. CLASSEN, Defendants.

Separate Amended Answer of Defendant, Samuel Murphy.

Comes now the above named defendant, Samuel Murphy, by leave of the Court first obtained, and files this his Separate Amended Answer to the petition of the plaintiff, to-wit:

First. That this defendant denies each and every allegation and averment contained in plaintiff's petition, except such as are hereinafter specifically admitted.

Second. Defendant admits that the copy of a decision of the Hon. Secretary of the Interior attached to plaintiff's petition and marked

Exhibit "A," is a true and correct copy of said decision in the case of McMichael *vs.* Murphy *et al.* affecting the tract of land described in plaintiff's petition.

And the defendant says that the said Secretary of the Interior erred as a matter of law in holding and finding that Levi Holt or the Heirs of Levi Holt could or did gain any right to the tract of land in controversy by the filing of the Soldier's Declaratory State-
82 ment set out in said decision, on the 11th day of March, 1890, for the reason that at said date said tract of land was segregated from the public domain by the homestead entry of Ewers White, made at the United States Land Office at Guthrie, O. T., on the 23rd day of April, 1889, and which entry was not cancelled until the 29th day of November, 1890, when said White relinquished said tract to the Government of the United States.

And said Secretary erred in awarding said tract of land to the heirs of said Levi Holt, deceased, and in holding the said entry of this defendant, the original patentee, for cancellation.

Third. And further answering this defendant alleges and says:— That on the 14th day of June, 1897, one, C. W. Ransom, who was then and there the Attorney of Record for the Heirs of Levi Holt, Deceased, was duly notified of the said decision of the Hon. Secretary of the Interior awarding said land to the said Heirs of Levi Holt and allowing thirty days in which the said Heirs of Levi Holt should perfect said Soldier's Declaratory Statement by paying the fees and commissions, but that said Heirs of Levi Holt never at any time offered to perfect said Soldier's Declaratory Statement or to enter said tract of land and never at any time settled upon, cultivated or improved said *said* quarter section or any part thereof and never attempted at any time so to do. And that by reason of the said laches, defaults and failures of the said Heirs of Levi Holt, deceased, said heirs lost any and all rights, or pretended rights, in and to the said tract of land.

And the said Interior Department of the United States, acting through the Commissioner of the General Land Office, closed said case in favor of said Samuel Murphy and issued patent to said land to this defendant, Samuel Murphy.

Fourth. This defendant, further answering, says that after the Hon. Secretary of the Interior had rendered the decision set forth in plaintiff's petition and Exhibit "A," the Commissioner of the General Land Office gave this defendant thirty days within which to show cause why the entry of this defendant should not be cancelled
83 for conflict with the alleged prior rights of the said Heirs of Levi Holt, deceased, and thereupon the said Samuel Murphy, this defendant, applied to show cause why said entry should not be cancelled, and a copy of said petition is hereto attached, marked Exhibit "A" and made a part hereof. But the said Commissioner of the General Land Office refused and denied the said application and thereupon said defendant here answering, filed his appeal on the 21st day of August, 1896, with the Hon. Secretary of the Interior Department. A copy of said appeal is hereto attached, marked Exhibit "B" and made a part hereof.

And the Hon. Secretary of the Interior thereupon rendered a de-

cision on January 30th, 1897, adverse to this defendant. A full and true copy of which said decision is hereto attached, marked Exhibit "C" and made a part hereof.

And thereupon this defendant filed his motion for review of said decision of the Hon. Secretary of the Interior on the 15th day of March, 1897. A full, true and correct copy of which said appeal is hereto attached, marked Exhibit "D" and made a part hereof.

That on the 29th day of April, 1897, the Hon. Secretary of the Interior overruled said motion for review *pro forma* and closed said case. A full, true and correct copy of said decision is hereto attached, marked Exhibit "E" and made a part hereof.

And this defendant says that there was error in all the conclusions and findings of the Hon. Secretary of the Interior adverse to this defendant, and particularly, in finding that the petition of the said Murphy, this defendant, why his entry should not be cancelled, was not sufficient, the same being good and sufficient, filed in time under the Rules of Practice of the Department and specifically pointing out facts which rendered the application of Levi Holt illegal and ineffective. And defendant avers that said Levi Holt nor his heirs gained any real rights or equities in and to said tract of land involved by reason of the *reason of the* erroneous conclusions of law on the part of the Hon. Secretary of the Interior set out in
84 the decision complained of.

Fifth. And further answering, defendant alleges and says that this defendant admits that Levi Holt died on or about the — day of May, 1893, as alleged in plaintiff's petition, and admits that the heirs of Levi Holt were ordered substituted by the Interior Department, but defendant says that the substitution of the said heirs was error of law in this, that the said Heirs of Levi Holt never had any inheritable interest in said land for the reason that said Levi Holt never at any time had a homestead entry on said tract of land nor settlement or improvements thereon nor did he ever file a contest against said land and bring himself within the provisions of any of the laws providing for the descent of interest or equities in land of the United States subject to entry under the homestead laws and defendant says that the rights of the said Levi Holt, if any he had, did not survive, but terminated with, his death.

Sixth. Defendant, further answering, says that he admits that Amelia M. Holt is the widow of the said decedent, Levi Holt, but alleges that she is not the only heir of Levi Holt, but that the following persons are children and heirs of Levi Holt also, to-wit:— George Holt, Minerva Manley, Ida Ransom, Levi Holt, Susan J. Holt, Edith Ransom, Earnest C. Holt and Nellie May Holt. All of the heirs of the said Levi Holt, above named, are over the age of 21 years, except Earnest C. Holt and Nellie May Holt, who are, as this defendant is informed and verily believes, minors.

And this defendant alleges that said heirs are necessary parties to a final termination of this controversy and asks that they be made parties defendant by order of the Court and be required to come into Court and show what interest, if any, they have in the tract of land involved.

Seventh. This defendant alleges and says that on or about the 14th day of June, 1897, this defendant made, executed and delivered a note and mortgage to one, J. H. Wheeler, upon the Southwest Quarter of Section Twenty seven (27), Township Twelve (12) North Range Three (3) West, Oklahoma County, Territory of Oklahoma, the tract in controversy, for the sum of Two
85 Thousand Dollars ($2,000.00) which said note for said sum of money was, when patent issued to this defendant, to be paid to C. W. Ransom for the use and benefit of the said Heirs of Levi Holt, deceased, the said C. W. Ransom representing to this defendant at the time said note and mortgage were executed and delivered, that he, Ransom, was the attorney for the said Heirs of Levi Holt and had the full right and authority from the said Heirs of Levi Holt, and especially the plaintiff herein, to compromise and settle said suit and said note was given by this defendant in absolute good faith, believing that the said C. W. Ransom had the authority to make said compromise and settlement.

And defendant says that the said C. W. Ransom, for said Heirs of Levi Holt, has received in all the sum of over Three Thousand Dollars ($3,000.00), which was paid to one, Ferdinand Batchelder, or the said C. W. Ransom, his attorney, who purchased said note of Two Thousand Dollars ($2,000.00) and the mortgage referred to, and that said mortgage, notwithstanding said payment, is still unsatisfied on the records of Oklahoma County.

And defendant alleges the fact to be that said Ransom had in fact the power and authority from said plaintiff and the other Heirs of Levi Holt to compromise and settle said case and did not exceed his authority in so doing and that said settlement was made without collusion, fraud or conspiracy on the part of this defendant and that all of the charges in plaintiff's petition charging fraud and conspiracy against this defendant are false and untrue.

Eighth. And this defendant further says that the plaintiff herein, Mrs. Amelia M. Holt, abandoned her claim to the tract of land in controversy in November, 1894, and never thereafter made any attempt to prosecute said claim in person or by attorney and never even made inquiry of her attorney or of the land office at Oklahoma City, or of the officers of the Land Department in Washington, D. C., or did any act or thing whatsoever in or about the prosecution of said claim to said land from November, 1894, to the
86 present time. And said plaintiff only made claim to said land after defendant had acquired title and the same had grown to be valuable because of the growth of Oklahoma City, adjoining said land and that said plaintiff, by her laches in the prosecution of her said claim before the land department and in asserting any right to said tract of land, has wholly lost any equities or rights she might otherwise possess.

Wherefore, Defendant prays for an order making the heirs of said Levi Holt, named in Paragraph Six (6), parties defendant and requiring them to answer herein and that the Court appoint a Guardian *ad Litem* for the said Minors, Earnest C. Holt and Nellie May Holt, and that upon final hearing hereof that the plaintiff's

action be dismissed at her own costs and that a decree be rendered quieting the title and rights of this defendant in and to the Southeast Quarter of the Southwest Quarter of Section Twenty-seven (27), Township Twelve (12) North, of Range Three (3) West, Oklahoma County, Oklahoma Territory, owned by this defendant, against the said plaintiff and against the said George Holt, Minerva Manley, Ida Ransom, Levi Holt, Susan J. Holt, Edith Ransom, Nellie May Holt and Earnest C. Holt.

SAMUEL MURPHY, *Defendant,*
By J. H. E., *His Attorney.*

Endorsed: Copy Filed February 13, 1903. B. D. Shear, Clerk.

EXHIBIT "A."

SAMUEL MURPHY
vs.
THE HEIRS OF LEVI HOLT, Deceased.

Petition Showing Cause Why H. E. #223 of Samuel Murphy Should Be Reinstated.

Comes now the above named Samuel Murphy and in compliance with the order of the Hon. Commissioner of the General
87 Land Office of February 20th, 1896, allowing him to show cause why his homestead entry No. 223 made November 29th, 1890 for the said S. W. ¼ Sec. 27, Twp. 12 N. R. 3 W. should be reinstated and the action cancelling the same be set aside, alleges and says:

First. Your petitioner shows that he was on the 14th day of April, A. D. 1896 duly served with the copy of Commissioner's letter "H" of February 20th, 1896 together with a citation allowing him within thirty days from said date of service to show cause why his said entry for said land should be reinstated.

Second. Your petitioner alleges that said entry should be reinstated and said order canceling the same be annulled and vacated for the reason that no legal service of the decision of the Hon. Secretary of the Interior Department holding said entry for cancellation, was ever made upon said entryman Samuel Murphy or any person authorized to accept such service for him and that no citation whatever was served upon him prior to said cancellation, calling upon him to show cause why his entry should not be cancelled for conflict with the application of Levi Holt made March 11th, 1890 for a soldier's declaratory statement for said land.

Third. That the homestead entry of this petitioner should not be cancelled but should be reinstated for the reason that the S. D. S. application filed by Levi Holt on March 11th, 1890 at the U. S. Land Office at Guthrie, O. T. for the S. W. ¼ Sec. 27 Twp. 12 N. R. 3 W. was not made for the exclusive use and benefit of the said Levi Holt nor for the purpose of his actual settlement and cultivation. That said declaratory statement was filed for the purpose of speculation and

sale and that the said Levi Holt did not take said land for a home for himself and that said application for an S. D. S. was therefore fraudulent, illegal and void from inception.

Fourth. That the said S. D. S. of the said Levi Holt for the
88 land herein, is fraudulent, illegal and void for the further reason that at the date he made said application he had pending an application for an S. D. S. upon the S. E. ¼ Sec. 7 Twp. 11 N. R. 3 W.,said application being made at Guthrie, O. T. on Sept. 2nd, 1889. That on April 19th, 1890 there was filed in the local land office what purported to be a withdrawal of said application and a dismissal of said appeal by Holt. That on May 3rd, 1890 Holt made an affidavit and filed it in the local office in which he stated in effect that he had not withdrawn said application but was prosecuting the same in good faith, and that on January 16th, 1891 the Hon. Commissioner of the General Land Office allowed the said Holt thirty days within which to make entry of the said S. E. ¼ Sec. 7 Twp. 11 N. R. 3 W., and your petitioner says that by the filing of said affidavit and the prosecution of said appeal for the said S. E. ¼ Sec. 7 Twp. 11 N. R. 3 W., the said Holt waived and abandoned his application for an S. D. S. upon the tract in controversy.

Wherefore, your petitioner prays that said order of cancellation may be revoked and annulled; that his homestead entry No. 223 for said land may be reinstated and may be declared to be a valid, subsisting entry upon said tract of land and that the application of said Levi Holt to file a declaratory statement for said land, may be rejected.

SAMUEL MURPHY.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

Personally appeared before me, the undersigned authority, Samuel Murphy of lawful age, who being duly sworn, deposes and says: That he is the claimant in the above entitled action; that he has heard read the within petition for re-instatement of entry and understands the contents thereof, and that the things and matters therein stated are true.

SAMUEL MURPHY.

Subscribed and sworn to before me this 16th day of April, 1896.
LESLIE P. ROSS, *Reci.*

89 I, J. H. Everest, do solemnly swear that I mailed a full, true and correct copy of the within petition for re-instatement, and accompanying affidavit, to Charles W. Ransom, Attorney for Levi Holt at Perry, O. T., by registered letter, said letter being sent on this 16th day of April, 1896, in further proof whereof affiant has hereunto attached the registry receipt for said letter.

J. H. EVEREST.

Subscribed and sworn to before me this 16th day of April, 1896.
LESLIE P. ROSS, *Rec.*

Registered { Letter. / Parcel.* } No. 155. Postoffice, Okla., O. T. Received 4/16, 1896, from J. H. Everest, Okla.

Let. / Par.* } addressed CHARLES W. RANSOM, *Att'y, Perry, O. T.*

J. A. FLATTERY, *P. M.*, Per G.

This space is reserved on counterpart for particulars connected with despatch of registered piece.

5–2886.

Endorsed on back: #—. Samuel Murphy *vs.* The Heirs of Levi Holt, Deceased. Petition showing cause why H. E. # 223 of Samuel Murphy should be reinstated. Filed at U. S. Land Office, Oklahoma, O. T., April 16, 1896. Leslie P. Ross, Receiver. J. H. Everest, Att'y for Samuel Murphy.

96 44687–1.

90 EXHIBIT "B."

Before the Honorable Secretary of the Interior Department, Washington, D. C.

SAMUEL MURPHY
vs.
THE HEIRS OF LEVI HOLT, Dec'd.

Involving H. E. No. 223, for the S. W. ¼ Section 27, Twp. 12, N. R. 3 West.

Appeal.

Comes now the above named entryman and homestead claimant, Samuel Murphy, by his duly appointed attorney, J. H. Everest of Oklahoma City, O. T., and hereby appeals from the action and decision of the Honorable Commissioner of the General Land Office herein in holding his entry for cancellation and in denying him the right to a hearing, per letter "H" of July 10, 1896, hereby appeals to the Honorable Secretary of the Interior Department, Washington, D. C., and relies upon the following errors in said decision for a reversal of said judgment.

First. The Honorable Commissioner erred in holding and finding that the "allegation that the (this claimant) was not served with notice to show cause why his entry should not be cancelled is not

[* Erased in copy.]

sufficient," said find- and holding being error of law in this, that it plainly appears without contradiction that neither this appellant nor anyone authorized as his attorney had ever been served with a copy of said former decision until April 14, 1896.

Second. The Honorable Commissioner erred in holding and finding that the charges made that Holt's application is speculative and fraudulent and that he had another application for land pending are too indefinite," said finding and holding being mistake of fact and error of law.

Third. The Honorable Commissioner erred in holding and finding "There is nothing in the allegations to warrant a hear-
91 ing," for the reason that said charges, if proved, warranted the cancellation and dismissal of Levi Holt's declaratory statement for the land involved.

Fourth. The Honorable Commissioner erred *not* holding and finding that the charge that application of Levi Holt, was "not made for the exclusive use and benefit of the said Levi Holt nor for the purpose of his actual settlement and cultivation; that said declaratory statement was filed for the purpose of speculation and sale, and that said Levi Holt did not take said land for a home for himself, and that said application for an S. D. S. was illegal and void from inception," for the reason that said charge specifically stated a cause of action, as held in the case of George *vs.* Stroud (22nd L. D., 245).

Fifth. The Honorable Commissioner erred in holding and finding that the facts set up in the fourth paragraph of the said petition, showing why this appellant's entry should not be canceled, was insufficient, for the reason that said paragraph shows that the said application of Levi Holt was speculative and fraudulent and not made in good faith, as he could not have two valid, pending applications for a soldier's declaratory statement and both of them be in good faith, and as he had made affidavit before the department that the application for the S. E. ¼ of sec. 7, tp. 11 N. of Range 3 West was made in good faith, it follows that the application for the tract herein involved which was pending at the same time could not have been made in good faith.

Sixth. The Honorable Commissioner erred in holding and finding that the heirs of Levi Holt had any rights under sections 2304 and 2305 of the Revised Statutes of the United States to complete the Soldier's Declaratory Statement or entry for the said Levi Holt, and erred in not holding and finding that the rights of the said Levi Holt abated with his death and that he left no right which could be perfected by heirs.

Seventh. The Honorable Commissioner erred in not hold-
92 ing and finding that the application of Levi Holt to make S. D. S. for the tract of land was a mere nullity and was incomplete and conferred no rights for the reason that the same was not accompanied by any non-sooner affidavit as required by law.

See case of Levi C. Kinner, decided by the Honorable Commissioner January 8, 1896; and also, case of Leffie W. Walk *vs.* William W. Beatty, decided by the Honorable Commissioner July 23, 1896. See also Lemmons *vs.* Williams, 19th L. D., p. 37.

Eighth. The Honorable Commissioner erred in holding that the heirs of Levi Holt be allowed to complete entry during the time allowed for Murphy to appeal from said action denying a hearing, and erred in not holding the application of the said Levi Holt in abeyance until said case was finally closed until appeal or otherwise.

Wherefore, Appellant asks that said decision be in all things set aside and reversed; that the application of Levi Holt may be declared to be void for the reasons herein set out, or that a hearing may be ordered to allow this appellant an opportunity to establish the charges made by him against the application of the said Levi Holt.

Respectfully submitted,

J. H. EVEREST,
Attorney for Samuel Murphy.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

Personally appeared before me the undersigned authority, J. H. Everest of lawful age, who, being duly sworn, deposes and says:

That he mailed by registered letter on this 20th day of August, A. D., 1896, a full and true copy of the within appeal and specifications of errors to Messrs. Ransom & Bailey, att'ys for the Heirs of Levi Holt, addressed to them at Perry, O. T., their postoffice address, in further proof of which mailing the registry receipt for such letter is hereto attached.

J. H. EVEREST.

Subscribed and sworn to before me this 20th day of August, 1896.

D. M. DILLEY, *Register.*

93

-ed { Letter / Parcel.* } No. 488. Postoffice, Okla., O. T. Received 8/20, 1896, from J. H. Everest, Okla., O. T.

376

a { Let. / Par.* } addressed RANSOM & BAILEY, *Perry, Okla.*

J. A. FLATTERY, *P. M.*, Per G.

5–2886.

This space is reserved on counterpart for particulars connected with despatch of registered piece.

Exhibit "B."

Endorsed on back: Before the Hon. Secretary Interior Department, Washington, D. C. Samuel Murphy *vs.* The Heirs of Levi Holt, dec'd. Appeal. S W. 27–12–3 west. Filed Aug. 21, 1896. B. M. Dilley, Register. J. H. Everest, Att'y for Samuel Murphy.

96 93290–2.

[* Erased in copy.]

EXHIBIT "C."

F. L. C. P. J. C. P. J. C.

B. G. B. G.

Vol. 24–431.
J. H. L.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *January 30th*, 1897.

SAMUEL MURPHY
v.
HEIRS OF LEVI HOLT.

Practice.

94 The Commissioner of the General Land Office.

SIR: The prior history of the tract involved in this appeal, the S. W. ¼ of Sec. 27, tp. 12 N., R. 3 W., Oklahoma Land District, Oklahoma Territory, and the connection of the several parties claiming the same, will be found in 20 L. D., 147, and 535. That part of the judgment of the Department which is material to the present controversy (*Id.*, 153) is as follows:

Inasmuch as Murphy's entry is of record, he will be allowed thirty days from date of notice of this decision to show cause why his entry should not be cancelled, and Holt's application placed of record.

This decision was officially promulgated by your office July 5, 1895, and notice sent to three different attorneys of record in this city for Murphy; also, to the local office, where, on August 20, following, service of your letter of July 5, 1895, together with a copy of departmental decision of June 12, 1895, was acknowledged by A. B. Hammer, who signed himself as "attorney for Murphy."

On October 22, following, the local officers reported that notice had been served and no action had been taken by Murphy. Thereupon your office, by letter of November 1, 1895, directed the cancellation of his entry, and allowed Holt to perfect his.

On November 5, following, Murphy filed a motion for review of your office decision of November 1, 1895, alleging that he had never received a copy of the departmental decision of June 12, 1895, or of your order promulgating the same of July 5, "since same was never served upon him in person, nor upon any attorney authorized to act for him;" that no citation to show cause was issued or served upon him or his attorney, as required by your office letter of July 5, and that he has a good and sufficient defense and showing why his entry should not be cancelled.

Accompanying this motion are the affidavits of Murphy and Hammer. The former swears that he was never served with a copy of departmental decision of June 12, or of your office
95 letter of July 5, 1895, transmitting said decision; that the acceptance by Hammer "of said letter and decision" is not

binding on affiant, because "Hammer was not and had never been the attorney for your affiant in said contest and case," and had never been authorized to appear or act for him. That no citation requiring him to show cause why his entrys should not be cancelled was ever issued, as directed by your office, July 5, 1895, or served upon any person authorized to accept service for affiant.

Hammer says he has no recollection of accepting service of the departmental decision or your letter transmitting the same; "that if he did accept service of the same as attorney for Samuel Murphy, the same was done under a misapprehension and mistake," because he never entered a general appearance in the case as attorney for Murphy, was not authorized to appear for him, etc.; that he was employed by him to examine the records "in the local office in said case, and did so, but that this was the extent of his employment."

Your office letter of February 20, 1896, says that:

It now transpires that said notice was served upon A. B. Hammer, as attorney for Murphy. Hammer makes affidavit that "he was not in fact the attorney for Samuel Murphy, and was not authorized to appear for said Murphy in said case, nor to do or perform any act or acts in said case as attorney for said Murphy." Murphy makes affidavit that Hammer was not his attorney in said case and was never authorized to appear, act, or accept service for him.

Taking into consideration all the circumstances connected with this case, it is not deemed advisable at present to set aside and vacate said decision of November 1, 1895, and re-instate Murphy's entry upon the motion filed. He was never, as far as the record shows, properly notified that he would be allowed to show cause why his entry should not be cancelled, and he now asks to be allowed to present his defense.

You will at once notify Murphy that he is allowed thirty days to show cause why the decision of November 1, 1895, cancelling said entry should be vacated and set aside, and his entry reinstated.

Allow no further action toward the disposition of the land to
96 be taken pending final adjudication of the case.

In pursuance of this order, Murphy filed his verified petition, praying that his entry "should be reinstated and the action cancelling the same be set aside," because (1) of the said order of your office; (2) because there was "no legal service" upon him, or on any person authorized to accept service for him, of the order cancelling his entry, and that no citation was served upon him prior to said cancellation; (3) that his entry should be reinstated, because the soldier's declaratory statement of Holt was not made for his exclusive use and benefit, or for actual settlement and cultivation, but for the purpose of speculation and sale; that Holt did not take the land for a home for himself, and his application "was therefore fraudulent, illegal and void from inception," and (4) that it was fraudulent, etc., for the reason that Holt had pending an application for another piece of land at the time he made this.

In support of this petition is presented the affidavits of A. B. Hammer and J. H. Everest, the latter Murphy's attorney in this proceeding. Hammer says he desires to add to his former affi-

davit that he was employed as attorney for Murphy for the sole purpose of examining the records "with reference to a former entry by said Levi Holt;" "that if he ever accepted service of a copy of the decision in said case, he never informed" Murphy of it.

Everest says that he has been attorney for Murphy "ever since the promulgation of the decision of the Interior Department on appeal in" this case; "that the only reason why the showing as to why his entry should not be cancelled was not immediately made by said Sameul Murphy prior to any service of said decision or order to show cause having been made on him," was because negotiations for settlement of the controversy were pending.

Your office, by letter of July 10, 1896, considered this controversy in its present aspect, and held that;

The allegation that he was not served with notice to show cause why his entry should not be canceled is not sufficient, and the charges that Holt's application is speculative, and fraudulent,
97 and that he had another application pending, are too indefinite. There is nothing in the allegations to warrant a hearing. The controversy over this land has been pending since 1889, and has been before the Hon. Secretary three times.

The application of Murphy for a hearing is hereby denied.

From this decision Murphy appeals, assigning several grounds of error.

The only question involved in this appeal is, in my judgment, whether Murphy received legal notice of the former decision. If he did, then he is precluded from further prosecuting this matter, because he did not comply with the order of the Department.

An informal investigation of the old files of this long drawn out controversy shows, that no one entered appearance as attorney for Murphy in the local office in the first instance. This is probably accounted for by the fact that he is an attorney himself and conducted his own case in the local office. In your office, however, Dudley and Michener entered their appearance, in July, 1892; James T. Hunter appeared for him in July, 1893, and Fred F. M. Beall did the same in October, 1893. In March, 1895, there was a "petition for certification of record," filed in the local office, which was signed as follows: "Samuel Murphy, by A. B. Hammer, his attorney." Upon the first three, on July 5, 1895, there was served notice of the departmental decision of June 12, 1895. These notices contained this: "Said departmental decision denied the motion for review of departmental decision of February 25, 1895, in favor of Holt. This case has been closed. Murphy will be ordered to show cause why his entry should not be cancelled for conflict with right of Holt." The notice of the local officers of the same date enclosed a copy of the decision of June 12, denying motions for review of departmental decision of February 25, 1895. This notice contained this: "Said case is accordingly closed. Notify the parties in interest. You will notify Murphy to show cause why his entry should not be canceled for conflict with Holt's S. D. S. directed by departmental decision dated February 25, 1895."

98 It was the receipt of this decision and notice that Hammer, as attorney for Murphy, accepted August 20, 1895. It does not appear by the record that notice was issued by the local officers requiring him to show cause *which* his entry should not be canceled, and this failure is alleged to be erroneous.

There is no force in this contention. The order of the Department was: "he will be allowed thirty days from date of notice of this decision to show cause," etc. This of itself was the order, and all that could be required was service of this decision on the entryman, and within thirty days he should be required to make his showing.

It will be observed that Murphy does not deny that he had knowledge of the decision. The most that can be said of his statement is that Hammer was not authorized to accept service for him, and that he was not personally served. The statement of Mr. Everest, as quoted above, is enough of itself to show that he—who was then acting as attorney for Murphy—and his client had knowledge of the order, and he assigns as a reason for not making the showing required, that there were negotiations pending looking to a settlement.

But, aside from this, the acceptance of service by Hammer was, in my judgment, binding on Murphy. He had appeared in the local office prior to that as attorney for Murphy, and so far as can be ascertained from the records herein the only one who ever acted in that capacity for him. His appearance was not limited or special, and he will not be heard now to claim that he had no authority to accept service of notice. The fact that he did so after having acted in the capacity of Murphy's attorney in the same controversy should estop him from afterwards attempting, even in the feeble manner he does here, to deny his authority. (Peacock *v.* Shearer's Heirs, 19 L. D., 211, same on review, 20 I. D., 213; Duncan *v.* Rand, 19 I. D., 354.)

It being determined that Murphy had legal notice and did not comply with the order to show cause, the other allegations, made as they were since the case was closed, cannot now be considered.

Your office judgment is therefore affirmed.

99 The papers transmitted with your office letter ("H") of September 10, 1896, are herewith returned.

Very respectfully, DAVID R. FRANCIS, *Secretary.*

Endorsed on back: Department of the Interior. Received. Doc. Mar. 24. No. 431. L. & R. R. Div.

EXHIBIT "D."

Before the Honorable Secretary of the Interior Department, Washington, D. C.

SAMUEL MURPHY
vs.
THE HEIRS OF LEVI HOLT.

Involving H. E. 223 for the S. W. ¼ of Sec. 27, Tp. 12 N., R. 3 W.

Motion for Review.

Comes now the above named claimant, Samuel Murphy, by his attorney of record J. H. Everest of Oklahoma City, O. T., and hereby moves the Honorable Secretary of the Interior Department, Washington, D. C., to review and reverse his decision herein of January 30th, 1897, and assigns as reasons for said motion the following errors apparent upon the face of the record in said case.

First. The Honorable Secretary erred in holding and finding that the entry of this claimant for the land involved was properly canceled, for the reason that said entry was only held for cancellation for conflict with the alleged prior right of Levi Holt and his heirs, and the entry of Murphy should only have been canceled if, and when, the heirs of Levi Holt presented an application to homestead said land at the local office at Oklahoma, O. T. It must be held that the entry was prematurely cancelled.

Second. The Honorable Secretary erred in holding and finding that the acceptance of service of the decision of July 5th, 1895, by an unauthorized person, was binding upon Samuel Murphy
100 and concluded his right to make a defense of his entry against the fraudulent and illegal claim of the heirs of Levi Holt. No power of attorney as required by the Rules of Practice was ever given by Samuel Murphy to A. B. Hammer, nor is there anything of record signed or done by Samuel Murphy which could be construed into an appointment of A. B. Hammer as his attorney, and both the said Hammer and the said Murphy deny such attorneyship. It is palpable error to hold such a relaxation of attorney and client existed, in the absence of any evidence to that effect and in the face of the sworn statements of both these parties.

Third. The Honorable Secretary erred in holding that the fact that J. H. Everest, the then attorney for Samuel Murphy, had actual knowledge that a decision had been received at the Oklahoma City Land Office in said case, amounts to a legal service of notice of said decision so as to deprive the claimant Murphy from making a defense and showing the fraudulent and illegal character of the claim of Levi Holt and his heirs.

Fourth. The Honorable Secretary erred in not holding that the allegations made concerning the illegality of the application of Levi Holt were sufficient to order a hearing to determine the truth

thereof and that said allegations if proved warranted the rejection of the claim of the said heirs of Levi Holt and the holding intact the entry of Murphy.

Fifth. The Honorable Secretary erred in not holding that the notice served upon A. B. Hammer as the alleged attorney of Murphy was illegal and therefore void for the reason that Hammer was not in fact such attorney, and erred in holding that Murphy did not comply with the order to show cause why his entry should not be canceled within the time allowed, and erred in affirming the judgment of the Commissioner of the General Land Office denying Murphy's motion for review.

Sixth. The Honorable Secretary erred in not holding and finding that Levi Holt never had any valid or legal claim to the tract in controversy for the reason that his application was made when said land was segregated by the homestead entry of White. And
101 it is decided in the case of Cowles *vs.* Huff, *et al.* (24th L. D., p. 81), that an application made after a judgment of cancellation but before the same becomes final is null and void and should not be accepted until the rights of the entryman have been fully determined.

If the law laid down in Cowles *vs.* Huff *et al.*, is *the law*, your Honor should, in the exercise of his supervisory authority and to do justice to this claimant, reverse and vacate the decision of February 25th, 1895, holding that Holt gained rights by such application, and should reject the claim of Holt's heirs and reinstate the entry of Samuel Murphy. The Department should not arbitrarily deprive this claimant of his homestead upon a mere technicality in favor of the heirs of Levi Holt, and to aid and encourage speculation in Government land, but should apply the law equally and give Samuel Murphy the benefit of this recent decision which controls and overruled the decision of February 25th, 1895, in the case of McMichael *vs.* Murphy *et al.*

Respectfully submitted,

J. H. EVERST,
Attorney for Samuel Murphy.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

Personally appeared before me, the undersigned authority, Samuel Murphy, who, being duly sworn, deposes and says:

That he is the claimant in the above entitled motion and the movant for a review; that said motion is filed in good faith that justice may be done and not for the purpose of delay, that this affiant is still an actual and *bona fide* resident on the tract of land involved in this controversy and has a house, orchard, fencing and cultivated lands, and other improvements, to the value of two thousand Dollars; that neither Levi Holt in his life time nor his heirs since his death have ever settled upon or improved said tract of land or any part thereof, and that said heirs have never appeared at the local office at Oklahoma City, O. T., and applied to perfect the pretended declaratory statement of the said Levi Holt.

102 That this affiant has expended in contesting for said land, in addition to the sums above set out expended for improvements, the sum of $800.50 Dollars, and has expended all of his available means and resources in improving said land and maintaining his claim to the same, and that the loss of said claim will mean financial ruin to this affiant.

SAMUEL MURPHY.

Subscribed and sworn to before me this 13th day of March, 1897.

B. M. DILLEY, *Register.*

Endorsed on Back: Before the Honorable Secretary Interior Department, Washington, D. C. Samuel Murphy *vs.* The Heirs of Levi Holt. Motion for Review. Filed this 15 day of March, 1897. B. M. Dilley, Reg. J. W. Everest Attorney for Samuel Murphy.

1897–27329–1.

EXHIBIT "E."

F. L. C. P. J. C. P. J. C.

Vol. 24–431. DEPARTMENT OF THE INTERIOR, A. B. P.
W. V. D. WASHINGTON, *April* 29, 1897. B. G. B. G.

On Review.

SAMUEL MURPHY
v.
HEIRS OF LEVI HOLT.

The Commissioner of the General Land Office.

SIR: Motion for review of departmental decision of January 30, 1897, has been filed by Samuel Murphy. This controversy
103 involves the S. W. ¼ of Sec. 27, Tp. 12 N., R. 3 W., Oklahoma Land District, Oklahoma Territory.

On examination of this motion it is found that no new question of law or fact is suggested. The same is therefore denied, and the papers herewith returned.

Very respectfully,

C. N. BLISS, *Secretary.*

Endorsed on Back: No. 3021 Amelia M. Holt *vs.* Samuel Murphy and A. H. Classen Separate Amended Answer of Samuel Murphy Def't. Copy.

And afterwards to wit; on the 19th day of February 1903 the plaintiff Amelia M. Holt filed her demurrer to the separate answer of A. H. Classen which is in words and figures as follows:—

In the District Court of the Third Judicial District in and for Oklahoma County, Territory of Oklahoma.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY and A. H. CLASSEN, Defendants.

Demurrer.

Comes now the plaintiff in the above entitled action and demur*rers* to the answer of the defendant A. H. Classen for the reasons:

I. That said answer does not states facts sufficient to authorize the Court in ordering the children of said Levi Holt whose names appear in said answer to be made parties defendant in said action for the reason that said answer fails to show that said parties have any interest in the land in controversy.

104 II. The plaintiff further demur*rers* that said answer does not state facts sufficient to constitute a defense to plaintiff's cause of action.

J. S. JENKINS AND
J. L. BROWN,
Attorney- for Plaintiff.

Endorsed: No., 3021, Amelia M. Holt, plaintiff, *vs.* Samuel Murphy *et al.* defendants, Demurrer Filed February 19th 1903. B. D. Shear, Clerk. By I. M. Halcomb, Deputy.

And afterwards to wit; on the 19th day of February 1903 the plaintiff Amelia M. Holt filed her demurrer to the separate answer of Samuel Murphy which is in words and figures as follows:—

In the District Court of the Third Judicial District in and for Oklahoma County, Territory of Oklahoma.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY and A. H. CLASSEN, Defendants.

Demurrer.

Comes now the plaintiff in the above entitled action, demurr*e*ring to the answer of the defendant Samuel Murphy for the reasons:

I. The said answer does not state facts sufficient to authorize the Court in order*i*ng the children of said Levi Holt, whose names appear in said answer, to be made parties defendants in said action, for the reason that said answer fails to show that said parties have any interest in the land in controversy.

II. The plaintiff further demurr*e*ring says, that said an-
105 swer does not state facts sufficient to constitute a defense to plaintiff's cause of action.

J. S. JENKINS AND
J. L. BROWN,
Attorneys for Plaintiff.

Endorsed: No. 3021 Amelia M. Holt, plaintiff *vs.* Samuel Murphy *et al.* defendants, Demurrer, Filed February 19th 1903. B. D. Shear, Clerk, by I. M. Halcomb, Deputy.

And afterwards to wit; on the 15th day of April 1903 the Court entered an order making O. G. Lee, Leonidas L. Land, F. M. Riley, W. L. Overholser, Myrta S. Mitscher, George Holt and Minerva Manley, Ida Ransom, Levi Holt, Susan J. Holt, Edith Ransom, Ernie C. Holt and Nellie May Holt, that the plaintiff and defendants each filed applications to make the above named parties defendants and all parties were duly served according to law, said order is in words and figures as follows:—

In the District Court of the Third Judicial District in and for Oklahoma County, Territory of Oklahoma.

Case Number 3021.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY ET AL., Defendants.

Order.

Now on this 15th day of April 1903, the same being one of the regular term days of the April term, 1903, *terms* of said Court, said case came on to be heard in open Court before Honorable J. H. Burford, Presiding Judge, upon the application of defendants to have certain of the heirs of Levi Holt, deceased, made parties defendant in said action.

106 And there upon the plaintiff, by her attorney, J. S. Jenkins presented objections to the consideration of said application, which said objection- were by the Court over-ruled to which the plaintiff excepted.

And the Court having examined the pleadings in said case and heard statements of counsel for both plaintiff and defendant, ordered that the following named heirs of Levi Holt, deceased, be made party defendants and be summoned to appear and defend said action, to-wit:—George Holt, Minerva Manley, Ida Ransom, Levi Holt, Susan J. Holt, Edith Ransom, Ernie C. Holt, and Nellie May Holt, to which order making said defendants above named parties defendant in this action, the plaintiff excepted. And there upon plaintiff filed a written motion to make certain other parties defendants in this action, which motion was by the Court granted and the parties named therein are hereby made parties defendant herein, and ordered summoned to appear and answer herein.

JNO. H. BURFORD,
Presiding Judge, Third Judicial District,
Territory of Oklahoma.

Endorsed: Case No. 3021 in District Court, Oklahoma County, Territory of Oklahoma. Amelia M. Holt plaintiff, *vs.* Samuel Murphy *et al.* defendants. Order bringing in parties defendant, Filed April 22nd 1903 B. D. Shear, Clerk.

And afterwards to wit: on the 13th day of July 1903 the plaintiff Amelia M. Holt filed her reply to the amended answer of A. H. Classen which is in words and figures as follows:—

107 TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

In the District Court Within and for Said County and Territory.

No. 3021.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY, A. H. CLASSEN ET AL., Defendants.

Reply to Separate Amended Answer of A. H. Classen.

Comes now the above named plaintiff, Amelia M. Holt, and files this, her reply to the separate amended answer of A. H. Classen.

1st. The plaintiff denies each and every allegation and averment contained in the answer of said defendant A. H. Classen, except such as admits the allegations in the plaintiff's petition.

2nd. And the plaintiff replying to the second paragraph in the defendant's said answer says, that the judgment rendered by the Secretary of the Interior referred to in said paragraph was rendered on the 25th day of February, 1895, and has never been reversed or set aside, and that defendant's answer setting up affirmative matter is filed more than eight years after the rendition of said judgment, and that the defendant is guilty of laches, that his said action to set aside said judgment is barred by the Statute of Limitations. The defendant has had full notice of said decision for more than six years.

3rd. And the plaintiff replying to the third paragraph in the said answer of said defendant, A. H. Classen, the plaintiff denies all the allegations therein stated and states the facts to be that on the said 14th day of June, 1897, the defendant Samuel Murphy, corrupted and bribed the attorney of the plaintiff and induced him to file a pretended waiver of her rights for a pretended consideration of $2,000; and said A. H. Classen was at that time receiver of
108 the Land Office and knew all the facts that said defendant held forcible possession of the land in controversy and concealed the facts from this plaintiff that the land had been awarded to her, and held said land by force and fraud until the present date; that said patent so issued to Samuel Murphy as alleged, was procured by the fraudulent acts of the defendants and said C. W. Ransom, as set out in plaintiff's petition.

Fourth. And the action of the Hon. Secretary of the Interior, complained of by the defendant in the fourth paragraph of his answer, was a judgment rendered by the Hon. Secretary of the Interior more than five years ago, and has never been reversed or set aside, that the defendant, A. H. Classen, has been guilty of laches in not prosecuting his rights, if any he had, for said land and that

said action, alleged in said paragraph, is barred by the Statute of Limitation. The plaintiff further replying says, that the said defendant, A. H. Classen, was guilty of laches in not showing cause, if any he had, why Samuel Murphy's said entry should not be cancelled, and that he cannot be heard to complain of the action of the said Secretary of the Interior more than six years after said judgment was rendered by the Hon. Secretary of the Interior. The plaintiff further replying says, that the judgment of the Hon. Secretary of the Interior, complained of, was rendered Jan. 30, 1897, more than six years before the filing of this answer, that said defendant, A. H. Classen is guilty of laches in not asserting his rights, if any he had, for said land before the filing of this answer; that said defendant, A. H. Classen's action, if any he ever had, is barred by the Statute of Limitation. The plaintiff further replying says, that if defendant was aggrieved by said judgment rendered on the 29th day of April, 1897, he is guilty of laches in not asserting his rights, if any he had, before the filing of his answer herein. Plaintiff further replying says that the defendant, A. H. Classen, cannot invoke the aid of a court of equity to quiet his title to the land in controversy, after holding the same for six years through force and fraud, and in violation of law, and by deceiving the plaintiff and the Hon. Secretary of the Interior.

109 Fifth. And the plaintiff replying to the fifth paragraph of defendant's answer says, that the decision of the Hon. Secretary of the Interior, complained of in said paragraph, has never been reversed or set aside and said decision is valid and binding, that said decision was rendered more than six years ago, that defendant, A. H. Classen, had full notice of said decision since its rendition, and has never complained of the same in any court of equity before the filing of his answer, but that he has ignored said decision and held possession of said land through deception, force and fraud until the present date; that he has been guilty of laches in not prosecuting his rights, if any he had, for said land, that said defendant is estopped from going into a court of equity and asserting his rights at this time, if any he ever had, after attempting to hold said land by deception and fraud for more than six years. And the plaintiff further replying to said fifth paragraph denies all the allegations in said paragraph except such allegations as admit the allegations in the petition.

Sixth. In reply to the sixth paragraph in defendant's answer, the plaintiff says, that she is entitled to recover all of said land because she is the widow of said Levi Holt.

Seventh. And for reply to the seventh paragraph in said answer the plaintiff says, that she denies each and every allegation and averment in said seventh paragraph of said amended answer of the defendant, A. H. Classen. And further replying to said seventh paragraph the plaintiff says that the consideration named in exhibit "G" in said paragraph is not true. Plaintiff further replying to said seventh paragraph says that the said defendant, A. H. Classen, was Receiver of the U. S. Land Office at Oklahoma City, at the time said C. W. Ransom filed said pretended waiver of the rights of this

plaintiff, and acted on said waiver as an officer of the Land Department and recommended to the Commissioner of the General Land Office that patent issued to the defendant Samuel Murphy, that said defendant, A. H. Classen, corresponded with the General
110 Land Office at various times with reference to the issuance of the patents to the land in controversy to said Samuel Murphy, before the issuance of said patents; that said A. H. Classen well knew, at the date of filing said waiver, that said C. W. Ransom had no authority to file the same, that said defendant A. H. Classen at various times, consulted with said C. W. Ransom after the issuance of said patent to said Samuel Murphy, and before he pretended to purchase said land as alleged in said Seventh paragraph of his answer with reference to obtaining a deed to the same, that said defendant A. H. Classen afterwards through the fraud of said C. W. Ransom, Ferdinand Batchelder and the other defendants pretended to purchase said land from said Ewers White and said Ferdinand Batchelder as shown by his said exhibit "G," but at the time of said pretended purchase the defendant A. H. Classen well knew that said land was the property of this plaintiff and that said Ransom and said Batchelder and said White and said Murphy held said land by deceit and force and fraud as set out in plaintiff's petition.

J. S. JENKINS AND
J. L. BROWN,
Attorneys for Plaintiff.

Endorsed: Filed the 13 day of July, 1903. B. D. Shear Clerk.

And afterwards to wit: on the 13th day of July 1903 the plaintiff Amelia M. Holt filed her reply to the separate amended answer of Samuel Murphy which is in words and figures as follows:—

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

In the District Court Within and for Said County and Territory.

No. 3021.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY, A. H. CLASSEN ET AL., Defendants.

Reply to Separate Amended Answer of Samuel Murphy.

111 Comes now the plaintiff and for reply to the separate amended answer of Samuel Murphy filed herein on the —— day of —— 1903, and for such reply says:

1st. She denies generally all of the allegations in defendant's answer contained except such allegations as admit the allegations in plaintiff's petition.

2nd. The plaintiff for her specific reply to the second paragraph in said answer says, that the judgment rendered by the Secretary

of the Interior referred to in said paragraph, was rendered on the 25th day of Feb., 1895, and has never been reversed or set aside, and that defendant's answer setting up affirmative matter, is filed more than eight years after the rendition of said judgment, and that the defendant is guilty of laches, that his said action to set aside said judgment is barred by *by* the Statutes of Limitations.

3rd. And for reply to the third paragraph in said answer the plaintiff denies all the allegations therein set out, and states the facts to be that on the said 14th day of June, 1897, the defendant, Samuel Murphy, corrupted and bribed the attorney of the plaintiff and induced him to file a pretended waiver of her rights for a pretended consideration of $2,000: and without the knowledge or consent of plaintiff that said defendant held forcible possession of the land in controversy and concealed the facts from this plaintiff that the land had been awarded to her, and held said land by force and fraud until the present date, as alleged in the petition that said patent so issued to Samuel Murphy, as alleged, was procured by the fraudulent acts of the defendants and said C. W. Ransom, as set out in plaintiff's petition.

Fourth. And the action of the Hon. Secretary of the Interior complained of by the defendant in the fourth paragraph of his answer, was a judgment rendered by the Hon. Secretary of the Interior more than five years ago, and has never been reversed or set
112 aside, that the defendant, Samuel Murphy, has been guilty of laches in not prosecuting his rights, if any he had, for said land, and that said action, alleged in said paragraph, is barred by the Statute of Limitations. The plaintiff further replying says, that the said defendant, Samuel Murphy, was guilty of laches in not showing cause, if any he had, why his said entry should not be cancelled, and that he cannot be heard now to complain of the action of the said Secretary of the Interior more than six years after said judgment was rendered by the Hon. Secretary of the Interior. The plaintiff further replying says, that the judgment of the Hon. Secretary of the Interior, complained of, was rendered Jan. 30, 1897, more than six years before the filing of this answer, that said defendant, Samuel Murphy is guilty of laches in not asserting his rights, if any he had, for said land before the filing of this answer: that said defendant, Samuel Murphy's action, if any he ever had, is barred by the Statute of Limitation. The plaintiff further replying says, that if defendant was ag-rieved by said judgment rendered on the 29th day of April, 1897, he is guilty of laches in not asserting his rights, if any he had, before the filing of his answer herein. Plaintiff further replying says that the defendant, Samuel Murphy, cannot invoke the aid of a court of equity to quiet his title to the land in controversy, after holding the same for six years through deceit force and fraud, and in violation of law, and by deceiving the plaintiff and the Hon. Secretary of the Interior.

Fifth. And the plaintiff replying to the fifth paragraph of defendant's answer says, that the decision of the Hon. Secretary of the Interior, complained of, in said paragraph, has never been reversed or set aside and said decision is valid and binding, that said decision

was rendered more than six years ago, that defendant, Samuel Murphy had full notice of said decision since its rendition, and has never complained of the same in any court of equity before the filing of this answer but that he has ignored said decision and held possession of said land through deception, force and fraud
113 until the present date: that he has been guilty of laches in not prosecuting his rights, if any he had, for said land, that said defendant is estopped from going into a court of equity and asserting his rights at this time, if any he ever had, after attempting to hold said land by deception and fraud for more than six years. And the plaintiff further replying to said fifth paragraph denies all the allegations in said paragraph except such allegations as admit the allegations in the petition.

Sixth. In reply to the sixth paragraph in defendant's answer, the plaintiff says, that she is entitled to recover all of said land because she is the widow of said Levi Holt.

Seventh. Plaintiff further replying to the seventh paragraph of said answer says, that the mortgage therein referred to, executed and delivered to one J. H. Wheeler, was fraudulent and void and executed by said defendant to said Wheeler without consideration as alleged in petition, that said mortgage was afterwards fraudulently transferred by said J. H. Wheeler to one Ferdinand Batchelder without consideration, all of which was well known to all of the defendants in this case. And the plaintiff further replying to the said seventh paragraph denies each and every allegation contained in said paragraph.

Eighth. And plaintiff replying to the Eighth paragraph of said answer denies each and every allegation therein contained and states the facts to be that she was prevented from residing upon said land and performing all the acts that the law required, by the fraud and deceit of this defendant and the defendant, A. H. Classen and all of the other defendants as set out in her petition.

Ninth. The plaintiff further replying says the defendant, Samuel Murphy, by his laches in the prosecution of his said claim before the courts and in asserting any right to such tract of land, if any he had, is wholly lost in equity, or any other rights that he
114 might otherwise possess.

J. S. JENKINS AND
J. L. BROWN,
Attorneys for Plaintiff.

Endorsed: Filed the 13th day of July 1903 B. D. Shear Clerk.
Endorsed on back: No. 3021 Amelia M. Holt *vs.* Samuel Murphy A. H. Classen *et al.* Reply to Amended Answer of Samuel Murphy Copy.

And afterwards to wit; on the — day of —— 1903 the Court overruled the demurrer of plaintiff to the separate answers of A. H. Classen and Samuel Murphy, which order is in words and figures as follows:—

And afterwards to wit; on the 16th day of May 1903 F. M. Riley filed his separate answer which is in words and figures as follows:—

B. 39, P. 562.

In the District Court of the Third Judicial District in and for Oklahoma County, Territory of Oklahoma.

Case No. 3021.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY, ANTON H. CLASSEN, ET AL., Defendants.

Separate Answer of F. M. Riley, Defendant.

Comes now F. M. Riley, one of the defendants, and for answer to the petition of the plaintiff in this action, alleges and says:—
115 That he denies each and every statement, allegation and averment of material matter in said petition contained.
Wherefore this defendant prays that said plaintiff recover nothing of and from this defendant by reason this action, but that this defendant have and recover of and from said plaintiff judgment for his costs herein and for such other and further relief as to the Court may seem just and proper.

F. M. RILEY, *Defendant,*
By J. H. EVEREST,
His Attorney.

Endorsed: Filed the 16 day of May 1903 B. D. Shear Clerk.
Endorsed on back: #3021 Amelia M. Holt *vs.* Sam'l Murphy *et al.* Answer of F. M. Riley Copy.

And afterwards to wit; on the 16th day of May 1903, Myrta S. Mitscher filed her separate answer which is in words and figures as follows:

In the District Court of the Third Judicial District Within and for Oklahoma County, Territory of Oklahoma.

No. 3021.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY, ANTON H. CLASSEN, ET AL., Defendants.

Answer of Defendant Myrta S. Mitscher.

Comes now the above named Mryta S. Mitscher, one of the defendants, herein and for answer to the plaintiff's petition
116 on file herein, alleges and says:—
That she denies each and every allegation, statement and

averment of material matter therein contained, not hereinafter expressly admitted.

For further answer to the said petition of plaintiff this defendant alleges and says, that she is the owner and in possession of the following described tract of land in Oklahoma County, Territory of Oklahoma, to-wit:—A part of the Southeast Quarter of the Southwest Quarter of Section Twenty seven (27) in Township Twelve (12) North, of Range Three (3) West, I. M., described as follows, to-wit:—Beginning at the Southwest corner of the Southeast Quarter of the Southwest Quarter of the said Section Twenty seven (27), thence North along the West line thereof Forty (40) rods; thence East on a line parallel with the South line thereof Twenty (20) rods; thence South on a line parallel with the said West line Forty (40) rods; thence West along said South line Twenty (20) rods to the point or place of beginning, being 5 acres on the Southwest corner of said 40 acre tract.

That this defendant purchased the same for a valuable consideration from the defendant, Samuel Murphy, and the same was conveyed to this defendant on June 1st, 1899, by said Samuel Murphy and his wife, Louisa Murphy, by a good and sufficient warranty deed, which said deed was duly filed for record in the office of the Register of Deeds for Oklahoma County Oklahoma Territory, on the 5th day of June, 1899.

That this defendant purchased said land and received said deed a a long time prior to the commencement of this action and all the acts of this defendant with relation to said land and said transaction were had and done without any knowledge whatever on the part of this defendant that the said plaintiff had, or claimed to have, any right or equity in and to the said land above described, or any part thereof. That this defendant is a purchaser for value without notice of any claim by the plaintiff in or to said real estate.

Wherefore:—Defendant, Myrta S. Mitscher, prays that the plaintiff receive nothing from or against this defendant by reason
117 of this action, but that this defendant may have judgment against the said plaintiff for her costs herein and for such other and further relief as the Court may find her entitled to.

MYRTA S. MITSCHER, *Defendant,*
By J. H. EVEREST, *Her Attorney.*

Endorsed: Filed the 10 day of May 1903 B. D. Shear Clerk.
Endorsed on Back: 3021 Amelia M. Holt *vs.* Samuel Murphy *et al.* Answer of Myrta S. Mitscher Copy.

B. 18—P. 125.

And afterwards to wit; on the 8th day of June 1903 the plaintiff filed her reply to the answer of Myrta S. Mitscher, which is in words and figures as follows:—

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

In the District Court Within and for said County and Territory.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY and A. H. CLASSEN ET AL., Defendants.

Reply to the Separate Answer of Myrta S. Mitscher.

Comes now the plaintiff, Amelia M. Holt, and replies to
118 the separate answer of Myrta S. Mitscher, and for such reply says, that the defendant, Myrta S. Mitscher has conspired with the other defendants in this case to cheat and defraud this plaintiff out of her said land, and in pursuance of said conspiracy procured a conveyance from the defendant, Samuel Murphy to her self. A copy of said deed is hereto attached, marked Exhibit "A" and made a part of this reply.

Plaintiff further alleges that said pretended deed was made without consideration and while the defendant, Samuel Murphy, was out of possession of said land, and during the pendency of a suit in the District Court of Oklahoma County, between Samuel Murphy, plaintiff, and William McMichael, defendant, with reference to the land in controversy, that in said suit a copy of the decision of the Secretary of the Interior setting out all the rights of this plaintiff is attached, and the defendant, Myrta S. Mitscher had full notice of all the rights and claims of this plaintiff.

Plaintiff further alleges that the husband of this defendant is an official of the U. S. acting as Indian agent for the Osages, that her brother, Byron D. Shear is Clerk of the District Court of the Third Judicial District of Oklahoma; that said deed from said Samuel Murphy to said Myrta S. Mitscher was made for the purpose of creating political influence against this plaintiff and in favor of all the defendants.

Plaintiff further states that a portion of the land herein was also conveyed to A. H. Classen, Receiver of the U. S. Land Office, and a portion to Seymore S. Price, Register of the U. S. Land Office and a portion to one Bebee, Post Office Inspector of the U. S., all of which deeds were made for the purpose of creating political influence against this plaintiff and in favor of all the defendants.

Wherefore, plaintiff prays that the defendant, Myrta S. Mitscher, be declared trustee for her use and benefit, that she be compelled to convey whatever legal title she may have in said land, to this plaintiff, and for all equitable relief to which she may be entitled under the law, and for costs of suit.

J. S. JENKINS &
J. L. BROWN,
Attorneys for Plaintiff.

Endorsed: Filed the 8 day of June 1903 B. D. Shear Clerk.

119 *Warranty Deed.*

This indenture, Made this first day of June A. D. 1899, between Samuel Murphy & Louisa Murphy husband and wife, of Oklahoma County, in the Territory of Oklahoma, of the first part, and Myrta S. Mitscher of Oklahoma County, in the Territory of Oklahoma, of the second part.

Witnesseth: That the said parties of the first part, in consideration of the sum of $1,000, the receipt whereof is hereby acknowledged do by these presence grant, bargain, sell and convey unto said party of the second part, her heirs and assigns, all the following described real estate situated in the County of Oklahoma, in the Territory of Oklahoma, to-wit:

A part of the South-east Quarter (¼) of the South-west Quarter (¼) of Sec. No. Twenty-seven (27) in Twp. No. Twelve (12), North of Range No. Three (3) W. I. M., described as follows, to-wit:

Beginning at the South-west corner of said South-east Quarter (¼) of said Sec. Twenty-seven (27) thence North along the West line thereof Forty (40) rods; thence East of the line parallel with the South line thereof Twenty (20) rods; thence South of a line parallel with said West line Forty (40) rods; thence West along said South line Twenty (20) rods to the point or place of beginning; being five (5) acres in the South-west corner of said forty (40) acre tract, rectangular in form and Forty (40) rods North and South by Twenty (20) rods East and West being a part of the homestead of said parties.

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, forever:

The said Louisa Murphy and Samuel Murphy for themselves, their heirs, executors and administrators do hereby covenant, promise and agree to and with said party of the second part, that at the time of the delivery of these presents they are lawfully seized in their own right of an absolute and indefeasible estate of inheritance in fee simple, of all and singular the above granted and described
120 premises, with all the appurtenances; that the same are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances of what nature or kind soever, and that they will warrant and forever defend the same unto said party of the second part, her heirs and assigns, against said parties of the first part their heirs, and all and every person or persons whomsoever, lawfully claiming or to claim the same.

In witness whereof, the said parties of the first part have hereunto set their hands the day and year first above written.

SAMUEL MURPHY.
LOUISA MURPHY.

Revenue Stamps $1.00.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

Before me Newton Avey a Notary Public in and for said County and Territory on this 1st day of June, 1899, personally appeared Samuel Murphy and Louisa Murphy to me known to be husband and wife and to me known to be the identical persons who executed the within foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein stated.

Witness my hand and official seal the day and year above set forth.

NEWTON AVEY,
[SEAL.] *Notary Public.*

My commission expires March 9, 1902.

Endorsement.

Samuel Murphy & Louisa Murphy to Myrta S. Mitscher.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

This instrument was filed for record on the 5th day of June, 1899 at 11:40 o'clock A. M. and recorded in Book 18 on page 125.

C. J. BOWMAN,
Register of Deeds.

121 And afterwards to wit: on the 16th day of May 1903 W. L. Overholser filed his separate answer which is in words and figures as follows:—

Book 16, p. 194.

In the District Court of the Third Judicial District Within and for Oklahoma County, Territory of Oklahoma.

Case No. 3021.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY, ANTON H. CLASSEN ET AL., Defendants.

Separate Answer of William L. Overholser, Defendant.

Comes now William L. Overholser, one of the defendants above named, and for answer to the petition of the plaintiff on file herein says:—

First. That he denies each and every statement, allegation and averment of material matter therein contained not hereinafter specifically admitted.

Second. For further answer to the said petition of plaintiff this defendant admits that he is the owner and in possession of the following described real property in Oklahoma County, Territory of

Oklahoma to-wit:—A part of the Southeast Quarter of the Southwest Quarter of Section Twenty-seven (27), Township Twelve (12)
North, Range Three (3) west, I. M., described as follows,
122 to-wit:—Beginning at a point on the East line thereof Forty
(40) rods North of the Southeast corner thereof, thence North along said East line Twenty (20) rods; thence West on a line parallel with the South line of said quarter Forty (40) rods; thence South on a line parallel with the East line thereof Twenty (20) rods; thence East on a line parallel with said South line of said quarter Forty (40) rods to the point of beginning, containing Five (5) acres.

Third. That said land was purchased by this defendant from Samuel Murphy, one of the defendants herein, for a good and valuable consideration and the same was conveyed by the said Samuel Murphy to this defendant on June 23rd, 1899, by good and sufficient warranty deed, which said deed was duly filed for record in the office *in* the Register of Deeds for said Oklahoma County, Oklahoma Territory, on June 28th, 1899.

That said purchase was made by this defendant and the said deed was made, executed and delivered by said Samuel Murphy, long prior to the commencement of this action, and to-wit:—for more than Two (2) years. That this defendant purchased said lands in good faith and without any notice whatever that the plaintiff herein had any interest, claim or equity in or to the said lands or any part thereof, or claimed to have any such interest, claim or equity as set out in her said petition or otherwise.

Wherefore:—This defendant prays that the said plaintiff receive nothing by reason of the said petition filed herein as against this defendant, but that this defendant may have judgment against the said plaintiff for his costs herein and for such other and further relief as the Court may find this defendants entitled to.

W. L. OVERHOLSER, *Defendant,*
By J. H. EVEREST, *His Attorney.*

Endorsed: Filed the 16 day of May 1903 B. D. Shear Clerk.
Endorsed on Back: 3021 Amelia M. Holt *vs.* Samuel Murphy *et al.* Answer of Wm. L. Overholser. Copy.

123 And afterwards to wit: on the 8th day of June 1903 the plaintiff filed her reply to the answer of W. L. Overholser which is in words and figures as follows:—

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

In the District Court Within and for Said County and Territory.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY & A. H. CLASSEN ET AL., Defendants.

Reply to the Separate Answer of William L. Overholser.

Comes now the plaintiff, Amelia M. Holt, and for her reply to the separate answer of William L. Overholser, and for such reply says that the defendant, William L. Overholser, has conspired with the defendant Samuel Murphy and the other defendants, to cheat and defraud this plaintiff out of her said land, and that in pursuance of said conspiracy has procured the defendant, Samuel Murphy, to convey to him a portion of said land. A copy of the pretended deed to said defendant Overholser is hereto attached, marked exhibit "A" and made a part of this reply.

Plaintiff alleges that, at the time of this pretended conveyance, there was a suit pending in the District Court of Oklahoma County, between the defendant Samuel Murphy and one William McMichael in which suit the right and title of this plaintiff was fully set out,
and the defendant William Overholser, had full knowledge
124 of all the rights of this plaintiff; that said defendant Samuel
Murphy, was not in possession of said land at the date of said conveyance, that said Overholser has never been in possession of said land, that the defendant, Samuel Murphy, and the defendant, F. M. Riley, attempted to put all of the other defendants in possession long after the pendency of this suit.

The plaintiff further alleges that the conveyance from said Murphy to said William L. Overholser was executed without consideration and in fraud of the rights of this plaintiff and for the purpose of hindering and delaying this plaintiff in the recovery of her land.

The plaintiff further alleges that, at the date of the execution of the deed above mentioned, said Samuel Murphy was Post-master at Oklahoma City, and that William L. Overholser was also in the employ of the United States, and that said deed was made to said Overholser for the purpose of creating political influence against this plaintiff and in favor of all the defendants.

Wherefore, plaintiff prays that the said William L. Overholser be declared trustee for this plaintiff, that he be required to convey whatever legal title vested in him, to this plaintiff; that the cloud cast upon her title by said deed be removed; that she have such other and further equitable relief as she may be entitled to under the law, and for costs of suit.

J. S. JENKINS AND
J. L. BROWN,
Att'ys for Plaintiff.

Endorsed: Filed the 8 day of June 1903 B. D. Shear Clerk.
11—335

Warranty Deed.

This indenture, Made this 23rd day of June, 1899, between Samuel Murphy and Louisa Murphy his wife of Oklahoma County, in the Territory of Oklahoma, parties of the first part, and William L. Overholser of Oklahoma County, in the Territory of Oklahoma, party of the second part.

Witnesseth, That said parties of the first part in consideration of the sum of Five Hundred Dollars the receipt whereof is
125 hereby acknowledged, do by these presents, grant, bargain, sell and convey unto said party of the second part his heirs and assigns, all the following described real estate, situated in the County of Oklahoma, Territory of Oklahoma, towit:—

A part of the Southeast Quarter of the Southwest Quarter of Section Twenty-seven (27), Township Twelve (12) North, Range Three (3) West, I. M., described as follows, to-wit:—Beginning at a point on the East line thereof Forty (40) rods North of the Southeast corner, thereof, thence North along said East line
"A" Twenty (20) rods; thence West on a line parallel with the South line of said quarter Forty (40) rods; thence South on a line parallel with the East line thereof Twenty (20) rods; thence East on a line *on a line* paralleel with said South line of said quarter Forty (40) rods to the point of beginning, containing Five (5) acres.

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, forever.

And said Samuel Murphy and Louisa Murphy for themselves their heirs, executors and administrators do hereby covenant, promise and agree to and with said party of the second part, that at the time of the delivery of these presents they are lawfully seized in their own right of an absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted and described premises, with all the appurtenances; that the same are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances of what nature or kind soever except that the grantors hereby retain a vendor's lien on the above described real estate for the payment *for* the purchase price of Five Hundred Dollars, and that they will warrant and forever defend the same unto said party of the second part his heirs and assigns, against said parties of the first part their heirs, and all and every person or persons whomsoever, lawfully claiming or to claim the same.

In witness whereof, the said parties of the first part have
126 hereunto set their hands the day and year first above written.

SAMUEL MURPHY.
LOUISA MURPHY.

Revenue Stamp 50 cents.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

Before me Newton Avey a notary public in and for said county and territory on this 23rd day of June, 1899, personally appeared Samuel Murphy and Louisa Murphy his wife, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

NEWTON AVEY,
Notary Public.

[SEAL.]

Commission expires March 9, 1902.

Endorsement.

Samuel Murphy and Louisa Murphy to William L. Overholser.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

This instrument was filed for record on the 28th day of June, 1899, at 2:00 o'clock P. M. duly recorded in book 18, page 194.

C. J. BOWMAN,
Register of Deeds.

And afterwards to wit: on the 16th day of May 1903 Leonidas L. Land and O. G. Lee filed his answer, which is in words and figures as follows:

127 B. 23, P. 383.

B. 2. Number 690.

In the District Court of the Third Judicial District in and for the County of Oklahoma, Territory of Oklahoma.

Case No. 3021.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY, ANTON H. CLASSEN, ET AL., Defendants.

Separate Answer of Leonidas L. Land and Oscar G. Lee, Defendants.

Comes now Leonidas L. Lee and Oscar G. Lee, defendants herein, and for answer to the petition of the plaintiff on file herein, allege and say—

First. That they deny each and every statement, allegation, statement and averment of material matter in said petition contained except such as are hereinafter expressly admitted.

Second. These defendants allege and say that they are the owners and in possession of the following tract of land lying and situated

in Oklahoma County, Territory of Oklahoma, described as follows: A part of the Southeast Quarter of the Southwest Quarter of Section Twenty-seven (27), Township Twelve (12) North, Range Three (3) West, I. M., to-wit:—Beginning at the Southeast corner of said tract, thence West along the South line thereof Sixty (60) rods; thence North on a line parallel with the East line thereof Forty (40) rods; thence East on a line parallel with the South line thereof Sixty (60) rods to the east line of said tract; thence South along said East line Forty (40) rods to the point or place of commencement, containing Fifteen (15) acres.

That these defendants purchased the same from the defendant, Samuel Murphy, and the same was conveyed to the defend-
128 ants on June 20th, 1900, by a good and sufficient warranty deed made, executed and delivered by said Samuel Murphy and wife to these defendants, which said deed was duly filed for record on June 27th, 1900, in the office of the Register of Deeds for said Oklahoma County, Territory of Oklahoma.

That these defendants purchased said land and received said deed a long time prior to the commencement of this action and all the acts of these defendants with relation to said land and said transaction were had and done without any knowledge whatever on the part of these defendants that the said plaintiff had, or claimed to have, any right or equity in or to said land above described, or any part thereof; and that these defendants are purchasers for value without notice of any claim by plaintiff in or to said real estate.

Wherefore Defendants, Leonidas L. Land and Oscar G. Lee, prays that the plaintiff may receive nothing by reason of this action, but that these defendants may have judgment against said plaintiff for their costs herein and for such other and further relief as to the Court may seem proper and just.

OSCAR G. LEE AND
LEONIDAS L. LAND, *Defendants,*
By J. H. EVEREST, *Their Attorney.*

Endorsed: Filed the 16 day of May 1903 B. D. Shear Clerk.
Endorsed on back: #3021 Amelia Holt *vs.* Samuel Murphy *et al.* Answer of L. L. Land and O. G. Lee Copy.

And afterwards to wit; on the 8th day of June 1903 the plaintiff filed her reply to the answer of Leonidas L. Land and O. G. Lee, which is in words and figures as follows:—

129 TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

In the District Court With- and for said County and Territory.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY & A. H. CLASSEN ET AL., Defendants.

Reply to the Answer of Leonidas L. Land & Oscar G. Lee.

Comes now the plaintiff and for reply to the separate answer of Leonidas L. Land and Oscar G. Lee, and for such reply says that the said Leonidas L. Land and Oscar G. Lee have conspired with the defendants, Samuel Murphy and A. H. Classen and the other defendants, to cheat and defraud this plaintiff out of her said land, and in furtherance of said conspiracy, have made a pretended trade with the defendant Samuel Murphy to purchase a portion of said land. A copy of said contract is hereto attached, marked Exhibit "A" and made a part of this reply, and a copy of said pretended deed is hereto attached, and made a part of this reply, marked Exhibit "B."

Plaintiff alleges, at the time of the execution of the said pretended deed and contract, this land was in litigation between said Murphy and one McMichael in which a decree of the Secretary of the Interior was set out showing the right and title of the plaintiff herein, and that the said defendants Land and Lee had full notice of plaintiff's rights, and pretended to buy subject thereto; that at the time of said purchase, the land was in litigation and not in the possession of the said Samuel Murphy.

Plaintiff further alleges that the purchase price set out in said pretended deed and contract has never been paid.

Wherefore, plaintiff prays that she have judgment against the said Leonidas L. Land and the said Oscar G. Lee quieting her title, and declaring them trustees, for her use and benefit and compelling them to convey, the legal title vested in them, to this plaintiff,
130 and for all equitable relief to which she may be entitled under the law, and for costs of suit.

J. S. JENKINS &
J. L. BROWN,
Attorneys for Plaintiff.

This contract and agreement made and entered into at Oklahoma City, in Oklahoma County, Territory of Oklahoma this the 13th day of June, 1900, by and between Samuel Murphy and Luisa Murphy parties of the first part, and Leonidas L. Land and Oscar G. Lee parties of the second part, by warranty deed in common form the following described real estate situated and lying in the county of Oklahoma and Territory of Oklahoma, described as follows, to-wit:—

A part of the Southeast Quarter of the Southwest Quarter of Section Twenty-seven (27), Township Twelve (12), North, Range

Three (3) West I. M., to-wit: Beginning at the Southeast corner of said tract, thence West along the South line thereof Sixty (60) rods; thence East on a line parallel with the South line thereof Sixty (60) rods to the East line of said tract; thence South along said East line Forty (40) rods to the point or place of commencement, containing Fifteen (15) acres.

Said conveyance to be made to said second parties upon the fullfilment by them of the following covenants and promises to-wit: said second parties agree to pay said first parties the total sum of Three Thousand Seven Hundred and Fifty Dollars ($3,750) for said conveyance as follows, to wit: The sum of Five Hundred and Fifty Dollars ($550) cash in hands; the further sum of Nineteen Hundred Dollars ($1900) whenever said first parties prof-ered said second parties a good and sufficient warranty deed in proper form, conveying to them said land above described, and accompanied by an abstract showing said land to be the property of the first parties in fee simple and free from all liens and incumbrances except a suit of Murphy against McMichael now on record in the
131 District Court of Oklahoma County, Territory of Oklahoma, and the further sum of Thirteen Hundred Dollars ($13.00) whenever the said suit last named is finally settled in favor of the said Samuel Murphy and possession of the land given him or those holding under him by decree of the court and the execution thereof by the sheriff of said Oklahoma County, Oklahoma Territory.

In witness whereof the said parties hereunto set their hands the year as above written.

Revenue stamp 50 cents.

SAMUEL MURPHY,
LOUISA MURPHY,
Parties First Part.
LEONIDAS L. LAND,
OSCAR G. LEE,
Parties Second Part.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

Before me J. M. Owen a notary public within and for the County and Territory aforesaid personally appeared Samuel Murphy and Louisa Murphy husband and wife, and Leonidas L. Land and Oscar G. Lee to me known to be the identical parties who subscribed to the foregoing instrument of writing and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

[SEAL.]

J. M. OWEN,
Notary Public.

My Commission expires Dec. 2, 1902.

Endorsed.

Contract for Sale of Real Estate.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

This instrument was filed for record this 13th day of June, 1902, at 6:00 o'clock P. M. and record in Book 2 page 690.

C. J. BOWMAN,
Register of Deeds.

132 *Warranty Deed.*

This indenture, made this 20th day of June A. D., 1900 between Samuel Murphy and Louisa Murphy husband and wife, of Oklahoma County, in the Territory of Oklahoma, parties of the first part, and Leonidas L. Land and Oscar G. Lee tenants in common, of Oklahoma County, in the Territory of Oklahoma, parties of the second part,

Witnesseth, That said parties of the first part in consideration of the sum of Three Thousand Seven Hundred and Fifty Dollars the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the said party of the second part their heirs and assigns, all the following described real estate, situated in the County of Oklahoma, Territory of Oklahoma, to-wit:

A part of the Southeast Quarter of the Southwest quarter of Section Twenty-seven (27), Township Twelve (12) North, Range Three (3) West, I. M., to-wit: Beginning at the Southeast corner of said tract, thence west along the South line thereof Sixty (60) rods; thence North on a line parallel with the East line thereof Forty (40) rods; thence East on a line parallel with the South line thereof Sixty (60) rods to the East line of said tract, thence South along said East line Forty (40) rods to the point or place of commencement, containing Fifteen (15) acres.

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, forever.

And said Samuel Murphy and Louisa Murphy for themselves their heirs, executors and administrators do hereby covenant, promise and agree to and with said party of the second part, that at the time of the delivery of these presents they are lawfully seized in their own right of an absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted and described premises, with all the appurtenances; that the same are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments,
and incumbrances of what nature or kind soever, except
133 taxes for the year 1900, and except that the grantors hereby
reserve a vendor lien for balance of purchase price in the sum of Two Thousand Two Hundred Dollars, evidenced by a note and

contract dated June 20, 1900, made by grantees to the grantor Samuel Murphy.

Revenue stamp, $4.00.

SAMUEL MURPHY.
LOUISA MURPHY.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

Before me J. Milton a notary public in and for said county and Territory on this 20th day of June, 1900, personally appeared Samuel Murphy and Louisa Murphy his wife to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

J. MILTON,
Notary Public.

[SEAL.]

My commission expires June 3, 1902.

Endorsement.

Samuel Murphy *et al.* to L. L. Land *et al.*

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

This instrument was filed for record on the 27th day of June, 1900 at 5:00 o'clock P. M.

C. J. BOWMAN,
Register of Deeds.

And afterwards to wit: on the 8th day of July 1903 the attorneys for plaintiff and defendants filed a stipulation by which they agreed to read in evidence certain depositions on the trial of said cause, which stipulation is in words and figures as follows:

133½ In the District Court of the Third Judicial District Within and for the County of Oklahoma, Territory of Oklahoma.

Number 3021.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY ET AL., Defendants.

Stipulation Concerning Depositions.

It is hereby stipulated and agreed by and between the plaintiff Amelia M. Holt, acting by and through J. S. Jenkins her attorney, and the following named defendants, to wit:—Myrta S. Mitscher, Oscar G. Lee, L. L. Land F. M. Riley, and W. L. Overholser, acting by their attorney J. H. Everest, that all of the depositions heretofore

taken in said case may be read in evidence on the trial of said cause, submitted, however, to the right to said defendants above named to interpose any objections to the said deposition and the several interrogatories and answers therein contained which might have been made at the time the said deposition- were taken had the above named defendants been present or represented before the officer taking the same.

This stipulation is made to avoid the expense of taking new deposition by reason of bringing in new parties as defendants.

J. S. JENKINS AND
J. L. BROWN,
Attorneys for Plaintiff.

MYRTA S. MITSCHER,
OSCAR G. LEE,
L. L. LAND,
W. L. OVERHOLSER,
F. M. RILEY,
Defendants,
By J. H. EVEREST, *Their Attorney.*

Endorsed: filed the 8 day of June 1903 B. D. Shear Clerk.

And afterwards to wit: on the 13th day of July 1903 said cause came on for trial and the plaintiff and defendants offered their evidence and made their objections, which said evidence and objections are in words and figures as follows:—

134 TERRITORY OF OKLAHOMA, *County of Oklahoma, ss:*

In the District Court of Said County.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY, A. H. CLASSEN ET AL., Defendants.

Proceedings on Trial.

And now on this, the 13th day of July, 1903, the same being one of the days of the regular April, 1903 term of said court, the above entitled cause coming on at Oklahoma City, O. T., before Hon. C. F. Irwin, specially assigned to try this cause, and the plaintiff appearing by her attorneys, J. S. Jenkins and J. L. Brown, and the defendants, appearing in person and by their attorneys, J. H. Everest and H. H. Howard, the following proceedings in said cause were had, to-wit:—

Mr. Brown reads petition to the court, and makes opening statement for the plaintiff.

Mr. EVEREST: It having become apparent from the pleadings and the opening statement of the counsel for plaintiff that the plaintiff is attempting to rely both upon the averments of fraud and conspiracy on the part of the plaintiff's counsel, C. W. Ransom, and the complete disaffirmance of his acts as such attorney, and is also at-

tempting to rely upon the affirmance of his acts, as such attorney, in accepting the deed for 120 acres of the land in controversy from one Ferdinand Batchelor, and to claim the fruits of the act of said attorney in making such contract: The defendants hereby move the court to require the plaintiff to elect whether she will affirm the acts of her attorney and claim the fruits of the compromise and settlement set up in plaintiff's petition, or whether she will disaffirm the acts of said attorney, and reply upon her allegations which tend to sustain a resulting trust under the public land laws of the United States.

Mr. BROWN: The allegation and statement made by the
135 attorney plaintiff denies, and deny his right, by a statement of the record, to determine the issues between us.

The COURT: The court will take the motion into consideration in the final decision in the case.

(Later). Above motion overruled. Defendants except.

11:40 Court here adjourns until 1:30 of same day.

1:30 P. M. Court convenes and the above entitled cause is proceeded with as follows:—

Mr. JENKINS: If the court please we first offer in evidence the filing papers——

Mr. HOWARD: If the court please, we desire to interpose an objection to the introduction of any evidence under this petition, for the reason that it does not state facts sufficient to constitute a cause of action.

Objection overruled. Defendants except.

Mr. JENKINS: We now offer in evidence the homestead filing of Ewers White.

Mr. HOWARD: Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendants except.

(Reading waived).

A copy of the same is hereto attached, marked "Exhibit A (P 165) & made a part of this record.

Mr. JENKINS: That includes the endorsement on the back?

The COURT: Oh, yes.

Mr. JENKINS: Now we offer in evidence the non-mineral affidavit of Ewers White.

Same objection by defendants. Overruled. Exception.

(Reading waived).

A copy of the same is hereto attached, marked "Exhibit B (P 167)" and made a part of this record. (Reading waived.)

Mr. JENKINS: Also the affidavit for filing homestead entry.

Mr. HOWARD: We object generally to the introduction of the papers relating to the homestead entry of Ewers White, as incompetent, irrelevant and immaterial. Overruled. Defendants except.

136 Mr. HOWARD: We waive the reading of all of them.

A copy of the last above named instrument is hereto at-

tached, marked "Exhibit 'C' (P 169)" and made a part of this record.

Mr. JENKINS: Now we offer in evidence the affidavit of Levi Holt;—this is the final discharge of Levi Holt from the United States army.

Mr. HOWARD: No objection to the introduction of that discharge.

The COURT: Let it be introduced.

A copy of the same is hereto attached, made a part of this record and marked "Exhibit "D" (P. 173)."

Mr. JENKINS:. We now offer in evidence the soldier's declaratory statement of Levi Holt.

Mr. HOWARD: Objected to as incompetent, irrelevant and immaterial. Overruled. Defendants except.

Mr. JENKINS:—and his power of attorney. Reading waived.)

Copies of the same are hereto attached, marked "Exhibit E. P. 174" and "Exhibit —" and made a part hereof.

Mr. JENKINS: We now offer in evidence the filing papers of Samuel Murphy.

Mr. HOWARD: We admit them; waive the reading of them.

The COURT: Let them be admitted.

The same is marked "Exhibit "F" P. 176-183" and a copy of same is hereto attached and made a part hereof.

Mr. JENKINS: We offer in evidence the decision of the Secretary of the Interior, dated July 21, 1891.

Mr. HOWARD: Objected to as incompetent, irrelevant and immaterial. Overruled. Defendants except. (Reading waived.)

A copy of the same is hereto attached, marked "Exhibit "G" P. 184-191" and made a part of this record.

Mr. JENKINS: We offer in evidence the decision of the Secretary of the Interior, dated the 25th day of February, 1895.

The COURT: Let it be admitted. (Reading waived.)

A copy of the same is hereto attached, marked "Exhibit "H" P. 192-200" and made a part of this record.

137 Mr. JENKINS: Now, we offer in evidence the notice of the decision of the Secretary of the Interior of Feb. 25, 1895, which was served on Samuel Murphy.

The COURT: Let it be admitted. (Reading waived.)

A copy of the same is hereto attached, Marcked "Exhibit "I" P. 201-202" and made a part of this record.

Mr. JENKINS: We now offer in evidence the letter of the register and receiver of the land office at Oklahoma City, dated April 2nd, 1895, transmitting to the commissioner of the land office, the motion for review of the departmental decision.

The COURT: Let it be admitted; reading waived.

Mr. JENKINS: And also the motion.

Same are marked Exhibit "J" 202, and Exhibit "K" 203, respectively and copies of the same are hereto attached and made a part hereof.

Mr. JENKINS: Now we offer in evidence the decision of the Secretary of the Interior on the motion for review.

The COURT: Let it be admitted; reading waived.

A copy of the same is hereto attached, marked Exhibit "K" 203-212" and made a part hereof.

Mr. JENKINS: We now offer in evidence the waiver of the rights of the Holt heirs, signed by C. W. Ransom.

The COURT: Let it be admitted.

A copy of the same is hereto attached, made a part hereof, and marked Exhibit "L" 216-217."

Mr. JENKINS:—with the certificate of the commissioner of the general land office showing that it is a true copy of the original.

Mr. JENKINS: Now, I will offer in evidence the final proof made by Samuel Murphy, signed by A. H. Classen, and dated May 20th, 1897.

The COURT: Let it be admitted; reading waived.

A copy of the same is hereto attached, marked "Exhibit "M" 219-225" and made a part of this record.

Mr. JENKINS: We offer in evidence the motion for review of the decision of the secretary, dated February 25, 1895, by Mur-
138 phy and McMichael.

The COURT: Let it be admitted. Reading waived.

A copy of the same is hereto attached, marked "Exhibit "N" 226–227" and made a part of this record.

Mr. JENKINS: We will offer in evidence the answer of Levi Holt in said motion for review.

The same is admitted, (reading waived) and a copy of the same is hereto attached, marked "Exhibit "O" 228–230 and made a part of this record.

Mr. JENKINS: Now, we offer in evidence the certificate of the commissioner of the general land office, certifying to the copies above offered in evidence.

The COURT: Yes, that goes in with the copies. P. 218.

Mr. JENKINS: Now, in the answer they have set out a copy of the decision of the Secretary of the Interior dated Jan. 30, 1897. We wish to offer in evidence the copy of the decision dated Jan. 30, 1897.

The COURT: Let it be admitted.

Mr. EVEREST: The pleadings are in evidence anyhow.

A copy of the same is hereto attached, marked "Exhibit "P" 56–58 and made a part of this record.

Mr. JENKINS: We also offer in evidence a copy of the motion for review, made by Samuel Murphy, which is also attached to Samuel Murphy's answer and made an exhibit.

The COURT: Let it be admitted.

A copy of the same is hereto attached and marked "Exhibit "Q" 51–52 and made a part hereof.

Mr. JENKINS: We also offer in evidence the final decision of the Secretary of the Interior, dated April 29th, 1897, which is attached to the answer of the defendant, Samuel Murphy's answer, and made a part thereof.

The COURT: Let it be admitted.

A copy of the same is hereto attached, made a part hereof, and marked "Exhibit "R" 61." (Reading waived.)

Mr. JENKINS: We now offer in evidence the relinquish-
139 ment of Ewers White to the Government.

A copy of the same is hereto attached, marked "Exhibit "S" 165" and made a part of this record.

Stipulation.—Here plaintiff and defendants agree that the plaintiff may offer in evidence letters and communications between the register and receiver of the land office at Oklahoma, being B. M. Dilley, and A. H. Classen, to the department at Washington, which is certified to by Seymour S. Price; said letters being bound together, and marked "Exhibit A."

Which said Exhibit A. is admitted in evidence and are hereto attached and made a part hereof. P. 232–249.

Mr. JENKINS: We offer in evidence the decision dated June 16, 1897 signed by B. M. Dilley, register and Anton H. Classon, receiver

(No objection.)

Admitted (reading waived) marked "Exhibit "T" 235, and made — hereof.

Mr. JENKINS: Now, if the court please we want to offer in evidence the letter of the commissioner of the general land office to the register and receiver of the land office at Oklahoma City, dated December 18, 1897, with the certificate of the commissioner of the general land office.

Mr. HOWARD: Objected to as incompetent, irrelevant and immaterial, the matter in issue being solely between Wm. T. McMichael and Samuel Murphy, and having no reference to the heirs.

The COURT: Let it be admitted; objection overruled and exception.

A copy of the same is hereto attached, marked "Exhibit "U" 244 and made a part hereof.

Mr. JENKINS: We now offer in evidence the patent of the United States to Samuel Murphy, dated the 19th day of January, 1898.

(No objection. Reading waived.)

The same is marked "Exhibit B" and a copy of it is hereto attached and made a part hereof. P. 29.

Mr. JENKINS: Now, we offer in evidence the deed from Samuel Murphy and wife to Ewers White, dated Jan. 24, 1898. P. 32–33.

The same is marked "Plaintiff's Exhibit C" and a copy of the same is hereto attached and made a part hereof by ruling of court.

140 Mr. JENKINS: I want to offer in evidence deed from Samuel Murphy and Laura Murphy to Ferdinand Batchelor dated July 27, 1897.

(No objection.)

The COURT: Let it be admitted (P. 30-31.)

A copy of the same is hereto attached, made a part of this record and marked "Exhibit D." (See attached to amended petition.)

Mr. JENKINS: We now offer in evidence mortgage from Samuel Murphy and wife to J. H. Wheeler, for the sum of $2,000, dated June 14, 1897, acknowledged before J. H. Everest, notary public.

The COURT: Let it be admitted and marked "Exhibit E."

(Reading waived.)

It is so done and a copy of the same is hereto attached. (See attached to the petition in this case.)

Mr. JENKINS: Now we offer in evidence copy of the quit claim deed from Ferdinand W. Batchelor to Ewers White.

The COURT: Let it be admitted and marked "Plaintiff's exhibit F." It is so done and copy of same is hereto attached and made a part hereof. P. 34.

Mr. JENKINS: Now we offer in evidence the deed from Ewers White and wife to A. H. Classen.

The COURT: Let it be marked "Plaintiff's exhibit G" and admitted. It is so done and copy of same is hereto attached. P. 35–36.

Mr. JENKINS: We offer in evidence the transfer of the $2,000 mortgage executed by Samuel Murphy and wife to James H. Wheeler, transferring that mortgage to Ferdinand W. Batchelor, a copy of which is on the margin of the record.

Mr. EVEREST: It is admitted that the mortgage from Samuel Murphy and wife to J. H. Wheeler was assigned to Ferdinand Batchelor.

Mr. JENKINS: Now, we offer in evidence the release of said mortgage, executed by Ferdinand Batchelor dated the 12th of May, 1899. Which said instrument is admitted, marked "Plaintiff's exhibit H" and a copy of the same is hereto attached and made a part hereof.

Mr. JENKINS: Now we offer in evidence the deposition of J. H. Wheeler——

Mr. EVEREST: Now, to save time, we wish to object to the introduction of the evidence as it is offered, going to show any
141 want of authority on Mr. Ransom's part to file this waiver of the preference right of the Holt heirs to make entry of this land. (Argument.)

The COURT: Well, there is nothing before the court just now, gentlemen; proceed, and when anything comes up I will pass on it.

Mr. JENKINS: We offer in evidence the deposition of James H. Wheeler.

The same is read by Mr. Jenkins in evidence, and a copy of the same is hereto attached, with all objections thereto and the rulings of the court, with exceptions, marked "Exhibit "V" p. 285-291."

Mr. JENKINS: Now, we offer in evidence the depositions of Samuel Murphy.

The same is read in evidence by said counsel for plaintiff, a copy of the same with objections, rulings of the court and exceptions thereto, is attached hereto and made a part hereof.

Mr. JENKINS: We next offer in evidence the deposition of J. H. Everest.

Mr. HOWARD: Objected to as incompetent, for the reason that the witness is here present and willing to testify. (Argument.)

The COURT: Let the record show that the objection *is* to the deposition of J. H. Everest is sustained on the ground that the witness is present in court and offers to testify, but that the deposition may be made a part of the record in the case for the purpose of saving exceptions.

Mr. HOWARD: The defendants object to the deposition being made a part of the record in the case, for the reason that the statute expressly provides that——

The COURT: I know; objection is overruled, and the evidence is only made part of the record for the purpose of saving exceptions of the plaintiff and not for the purposes of the case.

To which ruling of the court both the plaintiff and defendants except.

J. H. Everest was thereupon called to the witness stand by the plaintiffs, and after having been sworn by the court, testifies, which said testimony was afterwarsd (see below) excluded and expunged from the record on motion of counsel for plaintiffs, duly read to the court and filed with the clerk.

142 Mr. JENKINS (after examining said witness): Now, then, for the purpose of saving the record, we ask for the second time that Mr. Everest's deposition be allowed to go in evidence, for the reason that in it he has testified to facts entirely different from the facts he now testifies to on the stand.

Mr. HOWARD: To which we object for the reason that the witness is already on the stand. Plaintiff excepts.

Mr. JENKINS: Here plaintiff offers in evidence the deposition of J. H. Everest taken on or about the 13th day of September, 1902, before J. P. Allen, Probate Judge.

Mr. HOWARD: To which the defendants object for the reason that the witness is here in court and ready to testify.

The COURT: Objection sustained, and the deposition is only allowed to become a part of the record for the purpose of showing the defendants' exception, and not as proof in the case.

To which ruling of the court, the plaintiff excepts.

(Continued examination of Mr. Everest by Mr. BROWN:)

Mr. JENKINS (after finishing the above deposition): We now offer in evidence the deposition of C. W. Ransom.

The same being admitted, is read by H. H. Howard, for J. S. Jenkins, counsel for plaintiff.

6 P. M. Court adjourns until 9 A. M. the following morning.

9 A. M. July 14, 1903.—Court convenes pursuant to adjournment. All parties being present, the case is proceeded with as follows:

Mr. JENKINS: The plaintiff, now by leave of court, withdraws the deposition of C. W. Ransom heretofore offered in evidence and read, from the consideration of the court.

Mr. HOWARD: The defendants object to the granting of permission to the plaintiff to withdraw the deposition of C. W. Ransom, as it is already before the court and competent evidence by a competent witness.

Objection overruled. Deposition withdrawn. Defendants except.

Mr. JENKINS: We now offer in evidence the deposition of G. W. Batchelor. The same being admitted, is read in evidence by
143 said counsel and a copy of the same is hereto attached and made a part hereof, marked "Exhibit "W" 243-248."

Mr. JENKINS: We now offer in evidence the deposition of Amelia M. Holt.

The same being admitted is read in evidence by counsel and a copy of the same is hereto attached and made a part of this record, marked "Exhibit "X" 379-386.

The deposition of Julia Dunham is likewise offered by plaintiff in evidence, admitted, and read. A copy of the same is hereto attached marked "Exhibit "Y" 394-395.

The deposition of George Stiles is likewise offered in evidence, admitted and read by counsel for plaintiff. A copy of said deposition is hereto attached and made a part hereof, marked "Exhibit —."

The deposition of W. L. Overholser is also offered in evidence, by plaintiff, admitted and partly read. A copy of the same is hereto attached and made a part of this record, marked "Exhibit —."

Mr. EVEREST: We might waive the reading of the others. For the purpose of obviating the taking of testimony as to the value of the land,—the west ½ and the N. E. ¼ of the S. W. ¼ of section 27, township 12, north, range three west, Oklahoma County, Territory of Oklahoma, it is hereby admitted by the defendants that said land was, in May, 1899, of the actual value of from $6,000 to $8,000.

Mr. JENKINS: I want the record to show that we offer in evidence the depositions of W. L. Overholser, Oscar G. Lee, L. L. Land, and Samuel Murphy.

Mr. BROWN: Now, your Honor, we have filed this morning and ask leave of the court to present this motion (reads motion to withdraw testimony of J. H. Everest heretofore given on the stand).

The COURT: Leave is granted to withdraw the testimony of the witness, J. H. Everest, but the court denies the right of the plaintiff to make any part of the deposition quoted, or that motion
144 containing extracts from the deposition to be made a part of the record.

Mr. HOWARD: The defendants desire to except to the allowing of the plaintiffs to withdraw the testimony of J. H. Everest given on the stand. Exception allowed.

The COURT: The motion of the plaintiffs to withdraw the testimony of J. H. Everest, a witness introduced by them, from the consideration of the court, is granted, but no part of the extracts purporting to be from the deposition previously taken, of the same witness, Everest, and attached to said motion, or any of the deposition of Everest, which has been heretofore ruled out by the Court, shall become a part of this record.

Plaintiff rests.

(In chief:)

Mr. HOWARD: We want to move for judgment on the evidence for the reason that it does not make out a *prima facie* case, or sustain the allegations of the petition.

The COURT: Well, for the present purposes I will overrule it. When I come to decide the case, I will pass upon it.

Mr. JENKINS: We object now to the defendants introducing any evidence after making a motion for judgment on the pleadings.

Objection overruled. Plaintiff excepts.

Mr. HOWARD: Here the defendants offer in evidence the deposition of the plaintiff,—a deposition in addition to the one read by the counsel for the plaintiff, taken on the 8th day of October, 1902. Reads said other deposition of Amelia M. Holt, not heretofore introduced in evidence by the plaintiff.

A copy of the same is hereto attached, made a part of this record and marked "Exhibit "Z" 332-344."

Mr. HOWARD: We now introduce the deposition of C. W. Ransom introduced by the plaintiff and read by her counsel and subsequently withdrawn.

A copy of the same is hereto attached, made a part of this record and marked "Exhibit —."

Mr. JENKINS (after the reading by Howard of said deposition of Ransom): If the court please, the plaintiff now moves the
145 court to strike out all the testimony of the witness with reference to the transfer of the title to this land because the evidence shows that it was not in writing and was in violation of the statute of frauds.

Motion denied. Exception.

EDITH RANSOM, having been called to the stand by the defendants, gave the following testimony under oath:

(Sworn by the Court.)

By Mr. EVEREST:

Q. Where do you live, Mrs. Ransom?

A. In Perry.

Q. Are you acquainted with Amelia M. Holt, the plaintiff in this case?

A. I am.

Q. What relation are you to C. W. Ransom?

A. His wife.

Q. What relation was Levi Holt to you?

A. My father.

Q. Did you have any conversation with Mrs. Amelia M. Holt after the decision of the Secretary, in Feb. 1895, and during the year 1895?

Mr. JENKINS: Objected to as not giving the time and place.

Overruled. Plaintiff excepts.

A. I did, in the summer.

Q. Where was that conversation?

A. In the town of Ellenburg in New York.

Q. When was it?

A. Why I presume it was in the latter part of August, 1895.

Q. What did you say to her and what did she say to you in that conversation?

A. Well, Mrs. Holt opened the conversation,—I had seen her several times, and there had never been any allusion to the matter,—

and she asked me about the matter, and I told her about how the matter was still tied up, but that Mr. Ransom hoped for a final decision, and I told her that, in the event that Mr. Ransom won out, it would be necessary for her to come to Oklahoma, and she
146 told me at that time that she could not get away, and that she did not know that she would ever be able to come here.

Q. What was her business at that time?

A. She was keeping boarders in the little town there.

Q. Where were her children?

A. They were all living there together.

Q. Did you ever see a letter from Mrs. Holt to your husband C. W. Ransom?

A. Yes sir.

Q. Do you know in whose hand writing that was?

A. The letters, after my father died were all written by her daughter, Julia?

Q. Julia Dunham?

A. Yes.

Q. Now, about what time was it that you saw that letter?

A. I saw different communications from her, but the letter to which I specially refer was written after my marriage, and I am unable to say positively whether it was the spring of '96 or '7.

Q. Now state what that letter contained?

Mr. BROWN: Objected to, as incompetent; they haven't shown that the letter is not in existence.

Q. Is that letter in your possession?

A. No sir, that letter is not in either Mr. Ransom's or my possession, and I as well as he have made diligent search for it and could not find it.

The COURT: Objection will be overruled. Plaintiffs except.

Q. State what that letter contained?

A. Why the substance of it was about her inability to come to Oklahoma; she said that she could not possibly come here.

Mr. EVEREST: That is all.

Cross-examination.

By Mr. BROWN:

Q. Mrs. Ransom, this Mrs. Amelia Holt is not your mother, is she?

A. She's my stepmother.

Q. Who were present when you had this talk with Amelia
147 Holt in New York?

A. There was nobody present in the room at the time. Before we finished the conversation, my half brother came into the room; he was a boy of about 12 years old.

Q. Did that half brother hear the talk?

A. He presumably did.

Q. That little half brother, twelve years old, is now dead, is he not?

A. Yes sir, he died this spring.

Q. Did anybody else hear this conversation?

A. Nobody else; my sister was visiting there at the same time, but we happened to be in the kitchen by ourselves when we commenced this conversation.

Q. How long were you in New York?

A. I was there several weeks in New York, but I only visited my stepmother two or three times during that time.

Q. How much time did you spend with your stepmother?

A. I spent one night there; I was caught in a storm, and stayed one night; and then my sister and myself spent two afternoons with her. I spent two evenings with her and stayed there one night.

Q. And in all this talk that you were there there wasn't any talk at all of any kind about this contest, or about the land in Oklahoma, except to you alone, was there?

A. That is the only conversation we had whatever about the matter.

Q. There was no conversation at all in the family about the matter; or asking you about it or as to the country and one thing another?

A. Yes sir, I had one brother in law that was quite interested, and he asked me about the country, and about what the chances were of winning the contest, and I told him that they were very uncertain—that we might win and we might not.

Q. Now, how extensive a boarding house business was your mother running?

A. Not very extensive.

Q. How many boarders did she have?

148 A. Two.

Q. How many?

—. Two regular boarders and some transients.

Q. How many rooms did she have?

A. Seven rooms.

Q. Did she own that property or was she renting it?

A. She was renting this property.

Q. Your mother had no home of her own there did she?

A. Not at that time; the homestead had been sold.

Q. She was in good health, was she?

A. Not particularly rugged,—never has been; she had been subject to heart trouble to some extent.

Q. But she was able to go about and tend to her business wasn't she?

A. Oh yes, she could do that; but her daughter and sister they managed the house.

Q. And there wasn't anything to prevent her, that you know of—prevent her from coming out here, was there?

A. Nothing only her business. That was one phase of the matter; there was another that might be brought in here; perhaps it is a little out of place——

Q. Never mind that. Now, where in the house was this conversation had,—what part of the house?

A. With Mrs. Holt?
Q. About this land, that you spoke of?
A. That conversation was held in her kitchen; she was baking her bread; it was after dinner——
Q. That was in the kitchen and she was baking?
A. She was baking.
Q. What time of the day was it?
A. I presume it was in the afternoon,—possibly between three and four o'clock; I know it was some little time before supper; we have supper there at five o'clock.
Q. Was your mother herself baking there?
A. My stepmother.
Q. Well, I know, that is what I meant; I do not recognize those distinctions.
149 A. Oh, excuse me. Yes she was baking the bread. There is a little incident,—I beg pardon, just a moment——
Q. Now just please answer the questions and don't volunteer any information. Now, this letter; that was purely a business letter to your husband wasn't it,—that you were speaking about?
A. Not necessarily.
Q. Do you know whether it was or not?
A. No, I cannot say; but it was in answer to a letter written by——
Q. Can you give us the date of that letter?
A. Well, it was the spring of 1896 or 1897, or the latter part of the winter; it was not warm weather yet.
Q. It was earlier than the 1st of May, wasn't it?
A. It was earlier than the 1st of May.
Q. Now, how long was that letter,—how much of it?
A. Well, I cannot tax my memory to quite that extent; it may have covered a page and a half, and perhaps more.
Q. Now, where was that letter mailed?
A. Why, it was necessarily mailed at Ellenburg depot,—a little country town,—that was her home.
Q. Now, go ahead and tell us as near as you can all that that letter contained?
A. Well, to me,—the thing that I remember in it was her statement of her inability to come out here, as Mr. Ransom had requested her to do.
Q. What else was there in it of that character or nature?
A. Well, I am unable to tell you.
Q. Was there anything about family matters?
A. No,—only she would write about the children.
Q. Can you recollect what was said about the children?
A. No.
Q. What was there in that letter that was of interest to you?
A. Well, it was of interest to me to know whether she was coming here or not.
Q. How came you to see that letter?
150 A. Because I was in the habit of seeing all of Mr. Ransom's correspondence with my family.

Q. Where were you when you saw it?
A. At my home in Perry.
Q. How far did you live from Mr. Ransom's office?
A. About three blocks.
Q. You did not see it in his office, did you?
A. No, I did not. I was particularly interested to know whether she was coming out or not, because I was intending to go east that summer is she did not and of course——
Q. You knew that this claim down here had been awarded to her, did you not?
A. I knew that it had been awarded to my father.
Q. And you were anxious to have her come, weren't you?
A. I would have been very glad to have her come.
Q. Did you, when you received that letter, write anything back to her, urging her to come?
A. I never had any correspondence with Mrs. Holt,—none whatever.
Q. You and her are not very good friends, are you?
A. Just as good friends as we could be under the circumstances. My father married a woman we could not respect, and so under the circumstances we could not be very good friends.
Q. Now, you also received out of this deal, 80 acres of land in your own name, haven't you?
A. No sir.
Q. Did you not get 80 acres of land up in Kay County in your own name?
A. No sir, not out of this deal.

Mr. EVEREST: Objected to as incompetent, irrelavant and immaterial and as improper cross-examination. Objection overruled. Defendants except.

Q. Was there not a certain 80 acres of land that Mr. Batchelor had an interest in near Ponca City, that came into this deal, in your name?
A. No sir, it did not come in that way.
151 Q. It didn't come in that way?
A. No sir.
Q. Well, you got 80 acres of land, didn't you?
A. Yes sir, I have a deed to 80 acres of land in Kay County.
Q. Well, is not that the 80 acres that came through this deal with Mr. Batchelor?
A. No sir, it is not.
Q. And you never did get the 80 acres of land that came through this deal with Batchelor, did you?
Mr. JENKINS: Objected to as incompetent, irrelavant and immaterial.
Objection overruled? Plaintiff excepts.
A. No sir, not any 80 acres that came through a deal with Mr. Batchelor.

Redirect examination.

By Mr. EVEREST:

Q. Mrs. Ransom, you don't pretend to know all of your husband's business transactions, do you?
A. Why, certainly not.
Q. You don't know all of the transactions which led up to the getting of this deed to 80 acres of land from Mr. Batchelor, do you?
A. I certainly do not, not with Mr. Batchelor.

J. H. EVEREST was thereupon called to the stand by the defense and gave the following testimony under oath:—

By Mr. HOWARD:

Q. What is your business Mr. Everest?
A. Lawyer.
Q. Where do you do business?
A. In Oklahoma City.
Q. Do you know Samuel Murphy?
A. Yes sir.
Q. You may state whether you know anything of the executing of the mortgage and deed which have been mentioned,—the mortgage to J. H. Wheeler and the deed to Ferdinand Batchelor?
A. I know something about it, yes sir.
Q. For what consideration was that mortgage executed?

152 Mr. JENKINS: Objected to as incompetent, irrelavant and immaterial, the mortgage being the best evidence. Objection overruled. Plaintiffs except.

A. The consideration for the mortgage and note together, was the release and waiver of the right of the Holt heirs to any claim or pretended claim to the land in question.
Q. Now, what relation did you sustain to Mr. Murphy at that time?
A. I was his attorney.
Q. For what purpose was the deed executed?
A. The deed was executed and placed in my hands in escrow, to be turned over to the parties entitled to it,—to a party by the name of Ferdinand Batchelor, when Mr. Murphy authorized me so to do, and in no event except upon the release of the mortgage for two thousand dollars,—the note and mortgage referred to.
Q. You may state whether Mr. Murphy ever directed you to deliver that deed?
A. He never did.
Q. You may state whether that mortgage was ever released as a consideration for the delivery of that deed?

Mr. JENKINS: Objected to as incompetent, irrelavant and immaterial. Overruled. Plaintiff excepts.

A. It never was delivered as a consideration; there was no release

ever made in consideration of this deed. A partial release was made, but it had nothing to do with that transaction.

Q. Were the conditions under which the deed was to be delivered ever performed?

A. They never were.

Q. Mr. Everest, I will ask you this question; do you remember the circumstance of the execution and delivery of the deed from Mr. Murphy to Mr. White?

A. I remember the circumstance of its being recorded.

Q. You may state whether, at the time that this deed was recorded,—You may state where this deed to Batchelor was at the time the deed to Ewers White was recorded?

A. To this same land?

Q. Yes?

153 A. The Batchelor deed was still in my possession and was not delivered until about two hours after the White deed had been recorded.

Q. You mean possession was not secured?

A. Possession was not secured by Mr. Ransom.

Cross-examination.

By Mr. BROWN:

Q. Now Mr. Everest, your deposition has been before taken in this case, has it not?

A. My deposition and also my testimony.

Q. I will ask you this question: Wasn't this question propounded to you: "Do you know anything about Murphy's paying Ransom $2,000 in consideration of filing that waiver?"——

A. —I don't remember whether that question——

A. —and to that did not you make this answer: "After the Secretary of the interior had decided the case in favor of the heirs of Levi Holt, Ransom, who had represented Levi Holt in his life-time, and afterwards had represented the heirs in that litigation, came to me and told me that a settlement could be made of that controversy. I asked him on what terms a settlement could be made, and he told me that the widow of Levi Holt was unwilling to come down and perfect a title, and that she was his mother in law or step mother in law, and was quite old, and that she did not want to leave New York and come down to live there on the land, but preferred a sum of money or a part of the land; and after consulting with Samuel Murphy, and after several propositions had passed back and forth between Ransom and myself representing the two interests, Mr. Ransom said that, for two thousand dollars, or a note and mortgage securing that amount, or for a deed for a hundred and twenty acres of the land, a settlement and a compromise of the controversy could be obtained so that Murphy could perfect a title. Murphy accepted that proposition, and it was agreed that he was to execute a note and mortgage for two thousand dollars, and was to have the option, as I recollect it, of

154 taking that up by making a deed to a hundred and twenty acres of the land afterwards; and he did make, by direction of Ransom, a note and mortgage to J. H. Wheeler, for $2,000

and he also executed a deed to the west half and the north-east forty of the quarter section involved, which latter deed was to be placed in escrow until patent had issued to the land?"

Mr. HOWARD: Objected to as improper cross-examination. Overruled. Defendants except.

A. I testified to that, yes, and I still testify to it.

Q. Now let me ask you ——

A. I have'nt testified to anything different.

Q. Now let me ask you, was not that patent issued by the land department on Jan. 19, 1898, filed for record in the local landoffice on Jan. 25th, 1898?

A. I don't know.

Mr. HOWARD: Objected to as not the best evidence. Overruled. Defendants except.

A. I don't remember the date.

Q. Now don't you remember that this deed to Batchelor was also delivered on Jan. 25th, 1898, and the same deed placed of record when the patent was?

A. It was not delivered, no sir.

Q. Do you not know that that deed was placed of record the very same day that this patent was issued?

A. I don't know; I don't remember the date of the patent.

Q. Do you not know the fact that the deed was placed of record down here in the recorder's office of Oklahoma County, the very same day that the patent was delivered and recorded?

A. No sir, I do not know that; I have just told you that I do not know anything about when the patent was recorded; the patent will show.

Q. The patent was delivered at the time that the deed went out, was it not?

A. I don't know Judge. I was told that it was; I was told that it had been issued.

Q. Now, again, was not this question presented to you: "For whose benefit was Mr. Wheeler holding the mortgage that
155 you have been referring to, the $2,000 mortgage?" to which did you not answer: "Well, that would be hard to state; he acted as a go-between there, the idea being that if McMichael got a hearing so that Murphy failed to get his title and get the patent, then Murphy would have nothing to pay. The note and mortgage would be cancelled and returned to him. I suppose in that sense he acted as a go-between and trustee, as you might term it, for both Murphy, who gave the note, and for the parties whom Ransom represented."——

A. —Yes sir, I remember that question and the answer there is correct.

Q. Now, I further call your attention to this: —— You acted for Mr. Classen in procuring title to this land, didn't you?

Mr. HOWARD: Objected to as not proper cross-examination. Objection sustained. Plaintiff excepts.

Q. Now, again, "What did you tell him (referring to Mr. Classen) about the title that Ferdinand Batchelor held?"

Mr. HOWARD: Objected to as not proper cross-examination. Objection sustained. Plaintiff excepts.

Q. I will ask you again, if you did not swear in this deposition that you held this deed and that you always regarded it as of validity until such time as you discovered that Ewers White had got a deed on record in advance of it?

—— Objected to, same reason. Overruled. Ex.

A. No, I don't think I stated that, Judge.
Q. You did not.
A. No, take the whole deposition there and I don't think you will get that from it.
Q. Now, I will ask you again: "You knew at the time that Ferdinand Batchelor and Jim Wheeler were naked trustees at the time you advised Mr. Classen that the land would pass good title, did you not?" to which you answered: "No, I knew that Mr. Wheeler was a naked trustee as far as the mortgage was concerned, but I supposed that Mr. Batchelor had, under some arrangement with Ransom, settled with the Holt heirs, and that there was no conflict there."
156 Did you testify to that?

Mr. HOWARD: Objected to as not proper examination. Objection sustained. Plaintiff excepts.

Q. Now, again, I will ask you: "Did you and Ransom jointly request him (referring to Wheeler) to assign that mortgage to Batchelor?"——

Mr. HOWARD: We object to this as not proper cross-examination. Objection sustained. Plaintiff excepts.

Mr. BROWN: And we offer the answer to that in evidence.

Same objection. Sustained. Exception.

Q. Again, in speaking in regard to this same deed here, this Batchelor deed,—if you were not asked this question in regard to your talking to Mr. Classen: "You never talked to him a word about it"? (Referring to Batchelor).——

Mr. HOWARD: Objected to as not proper cross-examination.

Q. (cont.)——answer: "I may have done so. I considered the title absolutely perfect and knew of nothing to tell him that would in any way invalidate it."

The COURT: Objection sustained. Exception allowed.

Q. Now, this question: "What did it show (speaking of the abstract) about Ferdinand Batchelor?" to which did you not answer: "The abstract showed that Ferdinand Batchelor claimed title to that land, and it also showed that he had no title because Mr. White had secured title to the same tract and had recorded it first." Did you testify to that?

Mr. HOWARD: Objected to as not proper cross-examination. Objection sustained. Plaintiff excepts.

Q. And this: "At the time you examined this title of Mr. Classen's, where the abstract showed that a mortgage had been made to Jim Wheeler for $2,000 and a warranty deed to Ferdinand Batchelor for 120 acres of the land, you knew at the time that this mortgage and this deed had both been made and executed by Samuel Murphy and Mr. White, to these parties as trustees?" to which you answered: "No, I knew as far as Mr. Wheeler was concerned
157 originally that he was simply acting as a go-between. But when the mortgage was assigned to Batchelor, I supposed that Batchelor had become the owner of this mortgage and that he had settled with the Holt heirs, if there was any settlement to make; and that he was in fact the real, *bona fide* holder of the mortgage, and also whatever interest that deed might have given him." Did you swear to that?

Mr. HOWARD: Objected to as improper cross-examination. Objection sustained. Plaintiff excepts.

Q. (cont.)——"On what did you predicate that supposition?", answer: "On the facts concerning the transaction in my knowledge."

The COURT: Objection sustained. Exception.

Mr. HOWARD: We object to any further reading from this deposition because it is an attempt to do indirectly what the court has refused to let them do directly.

The COURT: Yes, and there is no part of it that seems to be material. If he has made any answers in that deposition relative to the obtaining of that deed by him from anyone or about the obtaining of that deed from him, you may let that go in. Anything else but that is not competent.

Q. I will ask you if you testified this in answer to this: "At the time that Samuel Murphy executed that deed to Ferdinand Batchelor and that mortgage to Jim Wheeler, there was not a dollar passed from either Batchelor to Murphy or from Wheeler to Murphy, was there?", answer: "Not that I know of. My understanding is that the sole consideration for the execution of those papers was the dismissal of the Holt heirs' interest to that land. It was in pursuance of the compromise and agreement which I have detailed already, and that mortgage and that title was put up to secure Mr. Ransom and the Holt heirs in the payment of that sum of money that Samuel Murphy had agreed to give him to dismiss that contest or to file that waiver. And the object of giving the mortgage and making the deed, of course, was to secure the relinquishment of the Holt heirs, which was secured, approved by the department and accepted."

158 Mr. HOWARD: Objected to as repetition and not proper cross examination. Objection overruled. Defendants except.

A. Yes that is a correct statement of what I swore to; and it states part of the facts.

Q. Is it not true that while your deposition was being taken here, that you went all over these subjects carefully and during that time you never once mentioned the fact that this deed had not been delivered in full of these conditions?

Mr. HOWARD: Objected to as not proper cross examination. Overruled. Exception.

A. I never was asked that question, or I could have answered you fully.

Q. You are an attorney for Mr. Classen, are you not?

A. I certainly am.

Q. How long have you been such?

A. I commenced to represent Mr. Classen in this particular case at the time that I examined that abstract for him.

Q. For this deal?

A. Yes sir.

Q. When was that?

A. My recollection is that it was in May, 1899.

Q. Before these deeds were made?

A. About the time they were made.

Q. And you have been representing him continuously since?

A. Yes, I represented him in the local litigation for this same tract and in this litigation.

Mr. HOWARD: You do not mean before the deed from Murphy to Ferdinand Batchelor was made?

A. No, I refer to the deeds from Ewers White and Ferdinand Batchelor to Mr. Classen, I suppose you referred to them too.

Q. And then you have continued to represent him. Have you a contingent fee in this case?

A. No sir.

Q. You have a feeling that if Mr. Classen fails, he fails by reason of error in your advice and directions, haven't you?

A. No sir, I have not; I think he could only fail through some other reason.

159 Q. Now, is this not true: That Mr. Murphy left this matter wholly and entirely to you to manage this mortgage and deed in such manner as to you would seem best, in order to secure him some of that land?

A. Your statement is too broad, Judge.

Q. Did he not give you that order in substance?

A. No sir, that is too broad a statement entirely.

Q. Did he not tell you that this land, having been awarded to the Holt heirs, that he would leave it to you as his attorney to make such arrangements as you could make to secure him the land or a part of the land by settlement, and that he would leave the whole matter of the negotiations to you?

A. No, your statement is too broad.

Q. And is it not true that Mr. Murphy just left the whole deal to

you, and that he absolutely did nothing but sign papers that you told him to?

A. No sir, it is not absolutely true. We consulted on every move, and I received my instructions from him after each consultation.

Q. You have a feeling Mr. Everest that it is necessary to win this lawsuit, and that in order to do it, you must destroy that deed of Batchelor's, is not that true?

Mr. HOWARD: Objected to as incompetent and argumentative.

The COURT: Objection sustained. It is argumentative.

A. H. CLASSEN, was thereupon called to the stand by the defense and gave the following testimony under oath:

By Mr. EVEREST:

Q. State your name to the court?
A. My name is Anton H. Classen.
Q. Where do you live Mr. Classen?
A. In Oklahoma City.
Q. What is your business?
A. I am in the real estate business.
Q. Are you one of the defendants in this action, Mr. Classen?
A. I am.
Q. Did you ever purchase the west half and the N. E. forty of the S. W. ¼ of section 27, township 12, north of range three
160 west, part of the tract in controversy?

Mr. JENKINS: Objected to as calling for the conclusion of the witness. Overruled. Plaintiffs except.

A. I did.
Q. What consideration or price did you pay for this land?

Mr. JENKINS: Objected to as not the best evidence.

Objection overruled. Plaintiff excepts.

A. I paid between seven and eight thousand dollars for it.
Q. To whom did you pay that money?
A. I paid in a note,—I gave Ewers White $2500, and then, through Mr. Stiles, I paid, I think it was $3,000.
Q. For what?
A. For a quit-claim deed; I don't remember exactly what the papers were; they were two papers.
Q. I will ask you to look at the deed marked "Ex. G" from Ewers White to A. H. Classen, and ask you if that is one of the deeds by which you claim title to this land?

Mr. JENKINS: We object to that as not bearing the proper revenue stamps. Overruled. Plaintiff excepts.

A. Why, yes sir.
Q. I here hand you plaintiff's "Ex. F" from Ferdinand Batchelor to Ewers White, and ask you if that is one of the instruments for which you say you paid $3,000?

Mr. JENKINS: Same objection.

The COURT: Well, you introduced it in evidence; if it is good in evidence for your side of the case, it is good for this.

Objection overruled. Plaintiff excepts.

A. Yes, this is one.

Q. I now hand you plaintiff's "Ex. H," which is the release to the 120 acres which you purchased, and ask you if that is one of the instruments that you say you paid $3,000 for?

A. Yes sir.

Q. Now, what other sums did you pay besides the $2,500 for the White title and the $3,000 for the Batchelor title?

161 A. Why, I think there was $1500 or $2,000—there was $500 that I paid you, and about one thousand or so that we considered in the litigation.

Q. Was there any suit pending affecting the title or possession of the land when you bought it?

Mr. JENKINS: Objected to as not the best evidence.

A. There were several suits pending I think; I know there was a suit that Ewers White had against McMichael for possession.

Q. Did you take the land subject to that suit?

A. Yes sir, I did.

Q. State whether you had any knowledge at the time you purchased this tract in May, 1899 that Amelia M. Holt, the plaintiff, or any of the heirs of Levi Holt, the defendants, had or claimed any interest or equity in this tract of land?

A. I certainly did not.

Cross-examination.

By Mr. JENKINS:

Q. Mr. Classen, you say that at the time you purchased this land from Ewers White it was in litigation?

A. Yes sir, it was in litigation; I remember just a few days after purchasing it Judge Brown came in and asking me whether I intended to buy it and told me not to buy it because it was in litigation.

Q. You remember reading the exhibit to that petition setting out the rights of the heirs of Levi Holt and his showing you that the land had been awarded to the heirs of Levi Holt, don't you?

A. I don't remember anything about that matter; I remember that McMichael was the man that claimed it.

Q. You know that there was an exhibit attached to the petition setting out that the land was awarded to the Holt heirs, don't you?

A. I do not remember anything about that.

Q. Now you say you paid how much for this land?

A. Why I should judge seven or eight thousand dollars.

Q. Can you come within a thousand dollars of what you gave for it?

162 A. Well we can figure it; I paid $2500 to White——

Q. How did you pay that and when did you pay it?

A. Sometime in May I gave my notes for it.

Q. Is it not a fact that you have paid some of those notes since this suit was brought?

A. I cannot remember that.

Q. Did not you pay them off along for two years——

Mr. EVEREST: Objected to as incompetent, irrelevant and immaterial.

The COURT: I cannot see that this is material.

Plaintiff excepts.

Q. Now then, besides the notes to White, what else did you give?

A. I paid $3,000; that was paid to Stiles.

Q. Where?

A. Why, I think that part of it was paid in his office and I think part of it was paid in the recorder's office. It was made in two payments, one was paid by check and the other one—I could not say whether it was paid in money or check.

Q. What title was that you were buying from Stiles, that you paid $3,000 for?

A. I don't know what title it was; it was neecssary to get the title; the deeds are here; I can refer to them.

Q. Here are the deeds (handing them).

A. These are the instruments.

Q. Refer to them and state what you were buying that you paid that $3,000 for?

A. There were three deeds; one of them——

Q.——I am asking you about that $3,000 you paid,—who drew the deed, did you?

A. I paid it to Captain Stiles.

Q. What title were you buying then?

A. I don't know what title I was buying.

Q. You were not buying the Ewers White title?

A. Ewers White had to make title; I got a deed from
163 Ewers White and I gave him notes for $2500.

Q. Who else did you buy a title from besides Ewers White?

A. I don't know who they were; the papers are there.

Q. Where?

A. There on the table.

Q. I will ask you if that $3,000 was not for a deed that was made from Ferdinand Batchelor to Ewers White,—if that is not the transaction which you paid the $3,000 on?

A. Now, I could not answer you what it was for; I had my dealings with Captain Stiles; he fixed up this matter; he went to White and Mr. Ransom, or whoever had this thing in charge, and the papers were delivered to him.

Q. And you paid $3,000?

A. I paid $3,000 and I paid $2500 in notes.

Q. Where is Captain Stiles now?

A. I do not know; I could not tell you; I think he is dead.

Q. You think he is dead?

A. Yes sir.

Q. You have not seen him for the last year or two have you?

A. Now sir, I didn't see him after he was purported to be dead, I could not of my own knowledge swear that he is dead, because I did not see him die.

Q. Are you an attorney yourself?

A. Why, I don't know; I am admitted to practice.

Q. You do not know for certain whether you are an attorney or not?

Mr. EVEREST: Objected to as incompetent, irrelavant and immaterial.

Objection sustained. Plaintiff excepts.

Q. What office did you hold at that time?

Mr. EVEREST: Objected to as incompetent, irrelavant and immaterial.

Overruled.

A. At what time was that.

Q. At the time you purchased this land you say here?

A. Why, I was receiver of the United States Land office.

The COURT: That has been admitted: that he was at that
164 time receiver of the land office.

Q. I will ask you if you were not receiver of the land office here at Oklahoma City at the time that Samuel Murphy made his proof on this land in controversy?

A. I don't remember what time the proof was made.

Q. On the twentieth day of May?

A. I took my position on the 1st day of May, 1897,—I took my position as receiver——

Q. Did you have any counsel passing on the title for you at the time you were purchasing this land?

Mr. EVEREST: Objected to as incompetent and immaterial.

Objection sustained. Plaintiff excepts.

Q. I will ask you if J. H. Everest was not your attorney at the time you purchased this land?

Same objection. Sustained. Plaintiff excepts.

Q. You spoke of having an abstract and that you bought the land as shown by the abstract; have you that abstract now?

A. I did not say anything about an abstract——

Objected to. Sustained. Plaintiff excepts.

Q. Did you make any enquiry of your attorney or anyone else as to whether any other parties had any rights to this land or not?

Mr. EVEREST: Objected to as improper cross examination and immaterial. Overruled.

A. I do not remember whether I made inquiry or not.

Q. Did you make any investigation?

A. I do not remember that; this deed was made four or five years ago.

The COURT: It has been already admitted that Mr. Everest was his attorney at that time and was acting for him.

F. M. DILLEY was the next witness called by the defense, and gave the following testimony under oath:

By Mr. EVEREST:

Q. Mr. Dilley, where is your residence?

A. In Oklahoma City.

165 Q. What is your business?

A. Well, I am an attorney by profession, but am not very active in the practice now.

Q. What official position did you hold in May and June, 1897?

A. I was register of the Oklahoma City land office.

Q. Do you recollect the circumstance of the waiver of the right of the Holt heirs being presented for filing to that land in controversy?

A. Yes sir.

Q. Who got that?

A. I did.

Q. I will ask you whether Mr. Classen had anything to do with that to your knowledge?

A. I have no recollection that Mr. Classen had anything to say about it at all.

Q. What was your custom as to who passed upon propositions of law in the office?

A. Why usually I was presumed to have charge of that; the receiver never did, unless there was a consultation; as a rule I heard the contests and passed upon the motions and attended to all matters of that kind.

Mr. EVEREST: That is all.

Cross-examination.

By Mr. BROWN:

Q. Now, Mr. Dilley, matters of that kind went before both the register and receiver of the land office, didn't they,—such as discharging a person's right to the land, if it was awarded to them?

A. They had equal power to pass upon it; I had no exclusive jurisdiction.

Q. Is it not a fact that the rules of the Department require the action of the register and receiver both?

A. Yes, that is the rule. But we could not always be together.

Q. Now again, the record shows that there was a certain enquiry about this Ransom discharge and that it was answered by Mr. Classen; do you know anything about that?

A. I do not know of any letter of enquiry, except that fact,

166 I think, that the waiver was not enclosed in the transmittal to the commissioner; it was signed by Ransom and transmitted.

Q. Well, Mr. Classen had knowledge of it?

A. I don't know; I transmitted the whole business right on to the Commissioner's office, he didn't. We had suspended Murphy's proof until the Holt matter was out of the way and had passed upon McMichael's protest, and I wrote the letter transmitting it.

Q. Was not there a further contention there in the land office about McMichael and in that contention the rights of these Holt heirs were brought out and testified about in the land office?

Mr. EVEREST: Objected to as not proper cross-examination.
Objection sustained. Plaintiff excepts.

Q. And was not that done when Mr. Classen was there present acting upon it and listening and talking about it,—about that very McMichael business?

A. I have no independent recollection that that was true at all.

A. H. CLASSEN was thereupon recalled by the defense for further examination, and testified as follows:

By Mr. EVEREST:

Q. Mr. Classen, I will ask you to state whether you had any knowledge whatever of the transaction of settlement, if there was any, between Samuel Murphy and the heirs of Levi Holt, either at the time it was made or up to the time this suit was filed?

Mr. JENKINS: Objected to for the reason that he cannot be heard to say that he has not; that he was bound as a United States officer to know that it was in the land office.
Objection overruled. Plaintiff excepts.

A. No, I had no knowledge whatever, and what is more, I never had it in my mind to buy this land until long after——

Mr. JENKINS: Wait a minute, wait; we object to that statement.

The COURT: The latter portion of the answer will be
167 stricken out; proceed.

Q. When did you first form any intention or have any idea of purchasing this land?

Mr. JENKINS: Objected to as incompetent and immaterial.
Objection sustained.

Mr. JENKINS: Mr. Classen, do the records of the land office, since you have been in there, speak the truth or not,—the record itself?

A. I don't know how to answer that.

The COURT: He could not answer it unless he made it himself. He might know, if he made the record.

Q. With reference to the record that you made yourself?

A. Well, the record of the land office is made like this: there is a great deal of it that is formal——

The COURT: Wait a moment, gentlemen; I haven't time to go into all the details of how the records in the land office are kept; we have consumed a great deal of time on this case already, and if you are going into that we will never get through. Answer that question

directly: whether the record, as kept by you is correct or not. Answer that by "yes" or "no," if you kept any.

A. I tell you Judge that it is almost out of the question to answer that——

The COURT: All right; witness refuses to answer, put that down.

Mr. HOWARD: I think, if the court please, that you misunderstood the witness; he did not refuse to answer it.

The COURT: Yes, I asked him the question direct and he refused to answer. Is there any more evidence; if there is, introduce it.

Mr. EVEREST: Here the defendants offer in evidence deed from Samuel and Louisa Murphy to L. L. Land, & Oscar G. Lee for a portion of the tract in controversy, recorded in book 23, page 383 of deeds, of the records of Oklahoma County. I do this to save bringing the register of deed up here.

168 Mr. JENKINS: All right no objection.

Mr. BROWN: Objected to for the reason that he does not make an offer of the original deed.

Mr. JENKINS (sotto voce): Well, it will same time.

The COURT: Mr. Jenkins stated that there would be no objection and now you are objecting; overruled.

Mr. EVEREST: Here the defendants offer in evidence the recorded copy of the deed from Samuel and Louisa Murphy to F. M. Riley, recorded in book 39, page 562, of deeds, of the records of Oklahoma County.

Mr. BROWN: Objected to as incompetent for the reason that it is not the original instrument. Overruled. Exception.

Let the record show that counsel prior to the offering of the deeds, conceded that the copies were correct and might be admitted in this way; and that after they were offered the second counsel objects, which objection is overruled.

Mr. EVEREST: We also offer the recorded copy of deed from Samuel and Louisa Murphy to W. L. Overholser found recorded in book 18, page 94 of the records of Oklahoma County.

Mr. BROWN: To which we object as incompetent; it not being the original instrument.

The COURT: The same order. Let the record show that it was conceded before the deeds were offered, by one of the counsel for the plaintiff that the records could go in as they were and that they are now objected to by the other counsel, which objection by the other counsel is overruled by the court.

Mr. BROWN: To which we except.

Mr. EVEREST: Also the recorded copy of the deed from Samuel and Louisa Murphy to Martha S. Mitscher found in Book 18, page 125 of the records of the register of deeds.

Same Objection by Mr. Brown, same ruling, and exception.

Defendant rests.

Mr. JENKINS: We want to offer in evidence the exhibit to
169 the amended answer in the case of White *v.* McMichael,—the case which was pending at the time that Mr. Classen

bought this land and the case in which he voluntarily made himself a party plaintiff.

Mr. EVEREST: We object to that as incompetent, irrelavant and immaterial.

Mr. JENKINS: We offer it for the purpose of showing that this exhibit sets out the title of the Holt heirs and that Mr. Classen was made a party to this suit and had actual notice of the rights of the Holt heirs.

The COURT: Objection sustained. Exception allowed.

Mr. BROWN: We now offer in evidence the deposition of Mr. J. H. Everest heretofore taken, wherein he testifies as to the conditions on which he held and received this deed from Samuel Murphy to Ferdinand Batchelor.

Mr. EVEREST: Objected to as incompetent; the witness having been fully examined in person. Objection sustained. Exception.

Mr. EVEREST: Amd is at this time present in person and being willing to testify.

Mr. JENKINS: We also want to introduce in evidence in this case, the deposition of A. H. Classen for the purpose of showing that he has made statements in his depositions when they were taken, different from the statements made on the trial; he being a party to the suit.

Mr. EVEREST: Objected to for the same reason. Deposition hereto attached marked exhibit —.

The COURT: Objection sustained. Exception allowed.

12 M. Court adjourned until 1 P. M. same day.

1 P. M. Same day. Court convenes. All parties present.

Hearing on this cause proceeded with.

Plaintiff's counsel reads and files with the clerk motion for continuance of this cause, which motion is overruled by the court, to which ruling of the court the plaintiff, through (?) counsel excepts.

170 There being no more evidence offered by either party to this cause, the case closes.

The following order was thereupon made by the court:

Plaintiff's brief to be prepared and a copy served on the defendant's counsel, and mailed to me by the 1st of August. The answer brief of defendants to be prepared and a copy served on plaintiffs counsel, and mailed to me not later than the 10th of August. And the plaintiff's reply brief to be prepared, copy served on defendants, and mailed to me not later than the 15th of August.

4–207.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *October* 31, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copies, Ewers White's Entry papers

and Relinquishment; Application of Levi Holt by his Att'y Julius V. Briesen, and his power of Attorney; Samuel Murphy's homestead application; Secy's decision in Blanchard *et al. vs.* White, dated July 21, 1891; Secy's decision dated Feby. 25, 1895; proof of service of notice of said decision on Murphy; Secy's decision on review, dated June 12, 1895; Commissioner's letter dated Dec. 18, 1897; Register & Receiver's decision dated June 16, 1897; Affidavits of Levi Holt dated April 19 and May 3, 1890 and affidavit of C. W. Ransom dated April 23, 1890, in the case of McMichael *vs.* Murphy, involving land in Oklahoma land district, Oklahoma, are true and literal exemplifications of the originals as they appear of record now on file in this office.

In Testimony Whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[SEAL.] BINGER HERMANN,
Commissioner of the General Land Office.

171 (4-138.)

Receiver's Duplicate Receipt No. 6. Application No. 6.

Homestead.

RECEIVER'S OFFICE, GUTHRIE, I. T., *April* 23, 1889.

Received of Ewers White the sum of Fourteen dollars and no cents; being the amount of fee and compensation of Register and Receiver for the entry of S. W. ¼ of Section 27 in Township 12 North of Range 3 W. under Section 2290, Revised Statutes of the United States.

C. M. BARNES, *Receiver.*

Ex. "A"
#14.00.

Indorsements.

OKLAHOMA CITY, O. T., *Nov.* 27, 1890.

I hereby relinquish all my right title and interest in and to the within described land to the Government of the United States of America.

"S" EWERS WHITE.

Recd. with letter. Recd. from "C" Jany. 21/91 A. G. H. No. 910/91.

U. S. Land Office, Oklahoma City, Ok. Ter. Received for filing Nov. 29, 1890. Department of the Interior L. & R. R. Div. Received Jan. 27, 1891. 931 in red ink.

And canceled by relinquishment Nov. 29, 1890. 321.

J. C. DELANEY, *Rec.*

UNITED STATES LAND OFFICE,
OKLAHOMA CITY, O. T., *Nov.* 28", 1890.

On this day personally appeared before me the undersigned Receiver of the United States Land Office Ewers White whose name is signed to the foregoing instrument is personally known to
172 be the identical person who signed and executed the same for the purposes therein stated and who acknowledged the voluntarily the same for the purposes therein stated.

J. C. DELANEY, *Rec.*

Filed Nov. 29, 1890 3. and canceled by relinquishment.
J. C. DELANEY, *Rec.*

(4-138.)

Receiver's Duplicate Receipt No. ——. Application No. ——.

Homestead.

RECEIVER'S OFFICE,
GUTHRIE, IND. TERRY., *Ap'l* 23*rd*, 1889.

Received of Ewers White the sum of Fourteen dollars, being the amount of fee and compensation of Register and Receiver for the entry of S. W. ¼ of Section 27 in Township 12 N. of Range 3 W., under Section 2290, Revised Statutes of the United States.

$14.00. C. M. BARNES, *Receiver.*

(4-062)

Non-Mineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and cannot be made on information and belief.

The non-mineral affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

UNITED STATES LAND OFFICE,
173 GUTHRIE, IND. TERRY, *Apl.* 23*rd*, 1889.

Ewers White, being duly sworn according to law deposes and says that he is the identical person who is an applicant for Government title to the South West quarter of Section Twenty seven, Town. twelve, Range 3, West, that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to

his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during
Ex. "B." any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purposes, and that his post-office address is Oklahoma, Ind. Terry.

EWERS WHITE.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant has been satisfactorily identified before me by Asa Jones, and that I verily believe him to be a credible person and the person he represents to be, and that this affidavit was subscribed and sworn to before me at my office in Guthrie, within the land district, on this 23rd day of April, 1889.

JOHN I. DILLE, *Register.*

174 (4-102.)

Affidavit.

LAND OFFICE AT GUTHRIE, IND. TERR.,
(Date) *Ap'l 23rd,* 1889.

I, Ewers White, of Oklahoma, applying to enter (or file for) a homestead, do solemnly swear that I did not enter upon and occupy any portion of the lands described and declared open to entry in the President's proclamation dated March 23, 1889, prior to 12 o'clock, noon, of April 22, 1889.

EWERS WHITE.

Sworn to and subscribed before me this 23 day of April, 1889.

JOHN I. DILLE, *Register.*

Ex. "C."

(4-063.)

Affidavit.

Homestead.

LAND OFFICE AT GUTHRIE, IND. TERR'Y, *April* 23, 1889.

I, Ewers White, of Oklahoma, I. T., having filed my application No. —, for an entry under Section No. 2289, Revised Statutes of the United States, do solemnly swear that — single man head of a family a native born citizen of the United States, over 21 years of age, that said application, No. —, is made for the purpose of actual settlement and cultivation; that said entry is made for my own exclusive benefit, and not directly or indirectly for the benefit or use

of any other person or persons whomsoever; and that I have not heretofore had the benefit of the homestead laws.

EWERS WHITE.

175 Sworn to and subscribed this 23rd day of April *23,* 1889, before

JOHN I. DILLE,
Register of the Land Office.

(4-007.)

Application No. 6.

Homestead.

LAND OFFICE AT GUTHRIE, IND. TERR'Y, *Ap'l* 23, 1889.

I, Ewers White, of Oklahoma, Ind. Terry., do hereby apply to enter, under Section 2289, Revised Statutes of the United States, the South West quarter of Section 27, in Township 12 of Range 3 W., containing 160 acres.

EWERS WHITE.

LAND OFFICE AT GUTHRIE, I. T., *Ap'l* 23, 1889.

I, John I. Dille, Register of the Land Office, do hereby certify that the above application is for Surveyed Lands of the class which the applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

JOHN I. DILLE, *Register.*

Indorsed.

No. 6 Received for filing 10:20 A. M., April 23, 1889, at Guthrie Land Office, Ind. Ter. No. 6.

Homestead Application, Department of the Interior L. & R. R. Div. Jul- 8, 1890. 6064 in red Ink. Ewers White.

176 APRIL 23, 1889.

March 7/90 to R. & R. affirming their decision and holding H. E. No. 6 of Ewers White for cancellation and rejecting application to enter made by C. O. Blanchard, pl'ff and V. S. Cook, def'n't, respectively, all and severally, because made in violation of Sec. 13—Act of March 2d, 1889, and President's Proclamation thereunder of March 23rd, 1889.

F. L. H., *Rex.*

March 7/90.

Indorsement Continued.

Section 27, Town. 12, Range 3 W.
July 8, 1890 to Hon. Sec'y on appeal R. & R. & co-nsel advd.

E. S. E.

In red ink. Canceled by relinquishment Nov. 29, 1890.
To R. & R. Aug. 15/91, with a copy of Sec'y's decision affirming this office. Case closed land subject to entry by first legal applicant.
J. L. M., *Div. H.*

(4–598.)

To whom it may concern:

Know ye, That Levi Holt a Corporal of Captain Joseph Walker's Company (I), N. Y. Regiment of Vol. Engineers.
Volunteers, who was enrolled on the Seventeenth day of October, one thousand eight hundred and sixty one to serve three years or during the war, is hereby discharged from the service of the United States this first day of May 1862, at Hiltons Head S. C. by reason of a disease of his private parts caused by overstrain on excessive fatigue duty.
(No objection to his being re-enlisted is known to exist.)
Said Levi Holt was born in United States in the State of New York, is Thirty Six years of age. Six feet one inches high, dark complexion, blue eyes, dark hair, and by occupation when enrolled, a farmer.
177 Given at Hilton Head, S. C. this Second day of May, 1862.
EDWARD W. SEWELL,
Col. Vol. Engineers, Commanding the Reg't.

* This sentence will be erased should there be anything in the conduct or physical condition of the soldier rendering him unfit for the Army.

U. S. OF AMERICA, *Ind Terr'y, ss:*

I hereby certify that the above is a true copy of a Certificate of Discharge exhibited to me this 11th day of March, 1890.
[SEAL.] W. S. ROBERTSON,
U. S. Commissioner, Dist. Kans.

Written across the face.

Comptroll*u*-'s office, March 11, 1868. Paid by cef. 403536 $200. By act of Jul- 28, 1866. July 11th, 1862. J. D. B.
Dep. Comptroll*u*-'s office Dec. 4th, 1867. Paid cef. 337401 $47.13. Diff. of by Pet. Cap. & Purate. J. D. B.

4–515.

Soldier's Declaratory Statement.

I, Levi Holt, of Clinton county and State of New York, do solemnly swear that I served for a period of Six months & upwards in the Army of the United States, during the War of the Rebellion, and was honorably discharged therefrom, as shown by a statement of such service herewith, and that I have remained loyal to the Govern-

ment; that I have never made a homestead entry or filed a declaratory statement under sections 2290, 2304, or 2309 of the Revised Statutes

178 by this power of attorney duly executed on the 25th day of Oct., 1889, — Julius V. Briesen, of Guthrie, county and State of Indian Territory, my true and lawful agent with full power of substitution herein under section 2309 aforesaid, to select for me and in my name, and file my declaratory statement for a homestead right under the aforesaid sections; and I hereby give notice of my intention to claim and enter said tract under said statute; that the location herein authorized is made for my exclusive use and benefit, for the purpose of my actual settlement and cultivation, and not either directly or indirectly for the use or benefit of any other person; that my said attorney has no interest, present or prospective, in the premises, and that I have made no arrangement or agreement with him or any other person for any sale or attempted sale or relinquishment of my claim in any manner or for any consideration whatever, and that I have not signed this declaration in blank.

LEVI HOLT.

Sworn to and subscribed before me this 25th day of Oct. 1889, and I certify that the foregoing declaration was fully filled out before being subscribed or attested.

HERBERT GOODSPEED,
[SEAL.] *Notary Public.*

By virtue of the foregoing, and of a certain power of attorney therein named, duly executed on the 25th day of Oct. 1889, and filed herewith, I hereby select the S. W. ¼ Section 27 Twp. 12, N. R. 3 W. as the homestead claim of Levi Holt, the aforesaid, and do solemnly swear that the same is filed in good faith for the purposes therein specified, and that I have no interest or authority in the matter, present or prospective, beyond the filing of the same as the true and lawful agent of the said Levi Holt, as provided by section 2309 of the Revised Statutes of the United States.

JULIUS V. BRIESEN, *Agent.*

Sworn to and subscribed before me this 11th day of March, 1890.
JOHN I. DILLE, *Register.*

179 Indorsed.

I acknowledge service of notice of the rejection of the within application and of my right of appeal within 30 days from March 11, 1890.

JULIUS V. BRIESEN.

No. — Received for filing March 11, 18/0, at Guthrie Land Office, Ind. Ter.

Presented March 11/90 held in suspense during right of appeal of entryman and contestants Blanchard and Cook Ewers White and for

consideration of pending prior adverse claims and applications to enter.

Rejected for conflict with H. E. No. 6 made April 23, 1889 by Ewers White. See Rej. Dec. 385-526-823. See Con. Dec. 13-459-515. Thirty days for appeal. Fees tendered.

C. M. BARNES,
Rec. C. B. B.

The above endorsement has a mark across it like an X.
In red ink.
1900-130347-34.
1890-46931-6.

4–137.

Receiver's Receipt No. 223. Application No. 223.

Homestead.

RECEIVER'S OFFICE,
OKLAHOMA CITY, O. T., *November 29th*, 1890.

Received of Samuel Murphy the sum of Fourteen dollars; being the amount of fee and compensation of Register and Receiver for the entry of S. W. ¼ of Section 27 in Township 12 of Range 3 W., under Section No. 2290, Revised Statutes of the United States.

$14.00. J. C. DELANEY, *Receiver.*
"F."

180 (4–102.)

Affidavit.

LAND OFFICE AT OKLAHOMA CITY, O. T.,
(Date) *November 29th*, 1890.

I, Samuel Murphy, of Oklahoma City, applying to enter (or file for) a homestead, do solemnly swear that I did not enter upon and occupy any portion of the lands described and declared open to entry in the President's Proclamation dated March 23, 1889, prior to 12 o'clock noon, of April 22, 1889.

SAMUEL MURPHY.

Sworn to and subscribed before me this 29 day of November, 1890.
J. C. DELANEY, *Rec.*

(4–063.)

(*Affidavit.*)

Homestead.

LAND OFFICE AT OKLAHOMA CITY, O. T., *November 29th*, 1890.

I, Samuel Murphy, of Olkahoma City, O. T., having filed my application, No. 223, for an entry under Section No. 2289, Revised

Statutes of the United States, do solemnly swear that I am a native citizen of the United States, over the age of twenty one years and the head of a family and not the owner of 160 acres of land, that said application, No. 223, is made for the purpose of actual settlement and cultivation; that said entry is made for my own exclusive benefit, and not directly or indirectly for the benefit or use of any other person or persons whomsoever; and that I have not heretofore had the benefit of the homestead laws.

SAMUEL MURPHY.

181 Sworn to and subscribed this 29th day of November, 1890, before

J. C. DELANEY,
Rec. of the Land Office.

4–102*b*.

To be used in all entries since August 30, 1890.

Affidavit.

LAND OFFICE AT OKLAHOMA CITY, O. T.,
Date, *November 29th*, 1890.

I, Samuel Murphy, of Oklahoma City, O. T. applying to enter (or file) for a homestead do solemnly swear that since August 30, 1890, I have not entered under the land laws of the United States or filed upon, a quantity of land, which, with the tracts now applied for, would make more than 320 acres, settled upon by me prior to August 30, 1890. Said settlement was commenced — and my improvements consisted of —.

SAMUEL MURPHY.

Sworn to and subscribed before me this 29 day of Nov., 1890.
J. C. DELANEY, *Rec.*

(4–062.)

Non-mineral Affidavit.

This affidavit can be sworn to only on personal knowledge,
182 and cannot be made on information and belief.

The non-mineral affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits of the entryman.

UNITED STATES LAND OFFICE,
OKLAHOMA CITY, O. T., *November 29th*, 1890.

Samuel Murphy, being duly sworn according to law, deposes and says that he is the identical Samuel Murphy who is an applicant for Government title to the S. W. ¼ of Section 27 in Township 12 of

Range 3 West, that he is well acquainted with the character of said described land, and with each and every legal sub-division thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lodge of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any persons; that said land is essentially non-mineral land, and that his application therefore is not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing said land for agricultural purposes, and that his post-office address is Oklahoma City, Oklahoma Territory.

SAMUEL MURPHY.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said
183 affiant has been satisfactorily identified before me by C. T. L. Cates and that this affidavit was subscribed and sworn to before me at my office in Oklahoma City, O. T., within the Oklahoma City land district, on this 29th day of November, 1890.

J. C. DELANEY, *Rec.*

(4–007.)

Application No. 223.

Homestead.

LAND OFFICE AT OKLAHOMA CITY, O. T.,
November 29th, 1890.

I, Samuel Murphy, of Oklahoma City, Oklahoma Territory, do hereby apply to enter, under Section 2289, Revised Statutes of the United States, the S. W. ¼ of Section 27, in Township 12 of Range 3 West, containing 160 acres.

SAMUEL MURPHY.

LAND OFFICE AT OKLAHOMA CITY, O. T.,
November 29th, 1890.

I, Jno. H. Burford, Register of the Land office, do hereby certify that the above application is for Surveyed Lands of the class which the applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

JNO. H. BURFORD, *Register.*

Indorsed.

1438. Department of the Interior L. & R. R. Div. Received Feb. 11, 1891, Dec. 23/92 for evidence that Holt was notified of office Ap'l 16/92. W. C. V.

184 Jan. 18/93 contest of McMichael dismissed subject to appeal. Cases of Holt, Fuller & Reufro dismissed & closed. Docket 6895. W. C. V. April 25, 1893, to Hon. Sec'y on appeal R. & R. & Dudley & Michener adused. H. A. C.

March, 13, '95 to R. & R. with copy of sec'y's decision affirming and reserving this office. J. L. M. "H."

April 11, '95, Forwarding motion for review to Sec'y. J. L. M. "H."

Indorsement continued.

Indorsement.

4566. Department of the Interior 223 L. & R. R. Div. Received April 26, 1893.

Homestead Application. Department of the interior Received Sep. 12, 1896. Samuel Murphy. L. & R. R. Div. (24) (43) Oklahoma, O. T.

U. S. Land office Oklahoma City Ok. Ter. Nov. 29, 1890, received for filing Nov. 29, 1890. S. W. ¼ Sec. 27, Town. 12 N. 3 W.

In red ink.

July 10/96 to R. & R. Murphy denied hearing appeal allowed J. W. A.

To R. & R. Sept. 11, 1891, ordering a hearing. J. L. M.

Black ink.

To R. & R. Ap'l 16, 92, motion for review of decision of Sept. 11, '91 denied. W. M. C.

To R. & R. Aug. 27/92 Contest record returned for opinion etc. July 16, '97, to R. & R. This entry intact. J. L. M. "H." R. F. F. Div. H. Dec. 6895.

July 5/95, to R. & R. closing case of McMichael *vs.* Murphy and Holt. Murphy to show cause. J. L. M. "H."

Nov. 1" '95 to R. & R. directing said officers to allow Holt to perfect his S. D. S. and in event of his doing so to cancel this entry. J. L. M. "H."

In red ink.

Feb. 20/96 Murphy allowed to show *why entry* should be reinstated. J. W. A.

185 Hearing denied 60 days for appeal Letter to R. & R. July 10/96 J. W. A. "H."

Sept. 10, 1896 to Hon Sec'y on appeal R. & R. advised. H. A. C.

Feb'y 10" '97 to R. & R. with copy of Sec'y's decision. J. L. M. "H."

March 23" '97 to Sec'y with motion for review. J. L. M. "H."

May 8, '97 to R. & R. closing case. This entry to be canceled in event Holt's heirs enter the land. J. L. M.

Vol. 13–844. DEPARTMENT OF THE INTERIOR,
WASHINGTON, *July* 21, 1891.

CHARLEY J. BLANCHARD
v.
EWERS WHITE and VESTAL S. COOK (Intervener).

Homestead Entry.

The Commissioner of the General Land Office.

SIR: I have considered the case of Charley J. Blanchard *v.* Ewers White and Vestal S. Cook (intervener), on appeal by each of them from your decision of March 7, 1890, involving the SW. ¼ of Sec. 27, T. 12 N. R. 3 W., Guthrie land district, Oklahoma Territory.

The record shows that White made homestead entry for this land on April 23, 1889, alleging settlement on April 22d; that Blanchard on the 23d of same month applied to make homestead entry for the tract, also alleging settlement on the 22d, and his application was rejected, for the reason that White had made entry for it.

"G." On the 27th of same month, Blanchard filed an affidavit of contest against the entry of White alleging that he entered upon and occupied the land prior to twelve o'clock noon of April 22, 1889, in violation of the provisions of section 13 of an
186 act of congress, approved March 2, 1889, and the President's proclamation thereunder.

It further alleges that White was a Deputy U. S. Marshal; that he used his official position to defraud the contestant in making entry, &c.

Hearing was ordered upon this affidavit, and set for July 16, 1889.

On May 1, 1889, Vestal S. Cook made application to make homestead entry for the tract, alleging settlement in the afternoon of April 22, 1889, which was also rejected on account of White's entry. On June 15th following, he filed an affidavit against White, and also charged in it that Blanchard, as well as White, had entered upon and occupied the land prior to twelve o'clock noon of April 22, 1889, and with this affidavit he filed a petition of invention, setting forth in detail the facts and also the facts concerning his own settlement, and he asked to be allowed to intervene, to prove the truth of his allegation, which privilege was granted him.

On the day set for the hearing all parties appeared, a large amount of testimony was taken, and the local officers, upon considering the entire case found that White was there as Deputy Marshal; that he had taken advantage of his position to make an entry in violation of the spirit of the law, and recommend the cancellation of his entry. They further found that Blanchard was in the Territory, and near the land before noon of the 22d of April, and they rejected his application to make entry. They also found that Cook had violated the law and disregarded the President's proclamation, by placing horses, for "relays," within the Territory, before noon on said April 22d, and rejected his application, from which findings and decision each of the parties appealed and your office, on March 7, 1890, affirmed said decision, from which each of the parties again appealed.

On November 28, 1890, White relinquished his entry, and the same was canceled. Cook having been properly allowed to
187 intervene, the relinquishment leaves the case before me, simply between Cook and Blanchard.

There have been, however, since the case has been pending in the Department, several applications to contest the entry of White, some of which also ask to intervene in this case; there are also several applications to make entry for the land, all of which have been forwarded through your office to the Department and filed with the papers in the case at bar, as none of these have been passed upon by you, and are not regularly before the Department, I have not considered them, but return them with the record, for your consideration and disposition.

The relinquishment of White eliminates some of the questions of law, and simplifies to some extent the evidence in the case. The only remaining questions of fact being as to the conduct of Blanchard and Cook, respectively, there being no question of priority between them.

The question of law are presented in the respective assignments of error in the appeals. Counsel for Blanchard, in his appeal assigns substantially the following errors.

(1) That your decision is against the weight of the evidence; (2) that it is against the law of the case, and under the latter they have made a number of assignments, which may be resolved into this: (*a*) that your office misconstrued and misapplied the act of Congress of March 2, 1889, and also the President's proclamation; or (*b*) that the proclamation of the President was based upon a strained and unwarranted construction of the law; that if it was the purpose of the said President by said proclamation to warn all persons to stay entirely without the boundaries of the Territory until twelve o'clock noon of April 22, 1889, it was "in violation of the rights guaranteed to this contestor by the Constitution and the laws of the United States," and that it was error to follow such a construction of the law.

In the appeal of Cook there are several assignments of error, the principal one being, that your office erred in holding that, inasmuch as Cook's agents entered the Territory before the hour desig-
188 nated, for the purpose of holding horses for him, that he was constructively in the Territory contrary to law, and in disregard of the proclamation. The ninth assignment is as follows:

"Said decision erred in assuming that a man can be constructively anywhere through an agent."

Briefly stated, the counsel of Cook claimed that his rights are not affected by the action of his agent, who went into the Territory in violation of law; that the result of the agent's conduct must rest upon him alone.

The testimony in the case is quite voluminous, but taking first that which relates to the conduct of Blanchard and we have substantially the following:

He was in the Territory several times during March and April, 1889. He had no business to attend to there. On the 15th of April,

he claims to have been employed by the "Boss Carpenter" of the Santa Fe Railroad Company, and says he went to work for it on the 19th, and worked till noon on the 22d. He was not a carpenter not railroad "hand," but was a farmer who lived in Cowley county, Kansas. He says in his testimony that he first concluded to take a homestead a half a minute before twelve o'clock noon, on April 22d. His wife had been at the depot at Oklahoma City for several days. She had a tent there and some household furniture, cook utensils, &c.

Blanchard says that at two seconds after noon on April 22d, by his time, he ran from the railroad tract about sixty feet, and drove a stake on the land in controversy. One George Selby immediately picked up Mrs. Blanchard's tent which laid by the side of the railroad tract, and ran to Blanchard. They pitched the tent at once, and Mrs. Blanchard and her child arrived just at this time and went into the tent, and thus Blanchard made settlement on the land. He testified that he never saw the tent till Selby brought it to him, did not know whose it was, has never been asked for it, has never paid for it, did not know about his wife being there. It appears that the soldiers had been trying to arrest him for being in the Territory, and at one time when absent, he had his "long sandy whiskers" shaved off and his mustache and eyebrows dyed black, and when he returned to Oklahoma City on the 19th of April, the corporal in charge of the patrol says "we did not recognize him." There is a great deal of Blanchard's testimony, and it is inconsistent with itself, contradictory and unreasonable besides being contradicted by the circumstances of the case and the testimony of the witness.

189

The railroad company had issued an order to its employés that any one who wished to take claims must "come out of the territory," and be out of it at noon on the 22nd day of April. This order was generally known and especially by the employés. Blanchard certainly knew it, but disregarded it (if an employé of the company), and he disobeyed the law, disregarded the President's proclamation, besides sacrificing his whiskers to destroy his identity that he might avoid arrest, this showing that he intended to circumvent the law and the proclamation, if he could.

Cook presents a different case. He frankly admits that he came to the eastern boundary of the Territory on the 20th of April; that on the night of the 21st, he and three friends sent two men with eight horses into the Territory; four to be stationed five miles from the border on the road to Oklahoma City, and four to be stationed five miles further on. These relays were to aid them in reaching Oklahoma City in the quickest possible time. Cook insists that this was not done to take advantage of other persons who were to make the trip on horseback and in wagons, but that it was for the purpose of enabling them to beat a certain railroad train which they had heard was to run from the northern boundary to Oklahoma City. He says he paid his share of $50 which was paid by four of them to the two men who took the horses into the Territory. They knew the law, and cautioned the men that if they went in then, they could never enter land in Oklahoma.

The frankness and truthfulness of Cook and his witnesses con-

trasts very favorably with much of the testimony in the case, but unfortunately for their enterprise and dash, they did not have in mind the old maxim of the law: "He who acts by or through
190 another acts for himself," or as Lord Coke states the principle: "He who does anything through another is considered as doing it himself."

The relations of Cook and the man who took his horses into the Territory were those of master and servant. The servant was employed to do a certain thing, and he did it. The master cannot avoid the consequences of this act, nor can he, as claimed, relieve himself from the responsibility by a contract with the servant that he will bear it. The servant cannot commit a trespass by the master's direction and relieve the master by an agreement, but both master and servant are liable.

In case at bar, the statute is prohibitory. It places a condition precedent to making entry for land in the Territory, upon all persons. It, in effect says persons otherwise qualified must have remained outside the boundaries of the Territory until after noon of the 22d day of April, 1889. This condition, or what is really an additional qualification to the entryman, was fixed by the act of Congress. Cook knowing the condition hired a man to violate it for his benefit, and then says to the Department, I did not violate the law, but simply hired a man to do it for me.

It is quite clear that Cook as well as Blanchard comes within the prohibitory operation of the law as it was understood generally, not only by the President of the United States and the Land Department, but by the great mass of the people. Counsel for Blanchard, however, claim that these lands were a part of the public domain from the date of purchase by the Government from the Creek and Seminole Indians, and that it was error to construe the act of congress to mean that any citizen could not of right go upon and inspect the public domain, to ride and walk over it at will, and they speak of the use of military force to prevent such inspection as a violation of rights guaranteed to citizens by the Constitution and laws of the country. They claim the President "acted without warrant of law and under a strained and unwarranted construction of the meaning of the language of the said act"—to all of which it is sufficient to say he acted, and his act has passed into history.

191 Counsel have made a labored distinction between the wording of the act of March 1, 1889 (25 Stats., 759) and the act of March 2, 1889, (25 Stats., 1004). The former act spoke of these lands as described in the agreement with the Indians. The latter speaks of the same lands as about to be opened to settlement. The former says "shall not be permitted to occupy or to make entry of such lands or lay any claim thereto." The latter says "but until said lands are opened for settlement by proclamation of the President, no person shall be permitted to enter upon and occupy the same." Counsel claim "enter upon *and* occupy" is equivalent to "make entry for and settlement upon" as those terms are used by the Land Department.

This matter was fully discussed in the case of townsite of Kingfisher *v.* Wood *et al.* (11 L. D., 330-335) and it is therein said:

"The words 'enter upon and occupy' are used in their ordinary acceptation. 'Enter' means to come or go into; and 'occupy' to take in possession, or to fill up. The language carefully avoids the technical expressions of the homestead laws, under which titles are to be obtained. In them to 'enter' lands, means to make that particualr declaration in writing at the land office that is called an 'entry.' It is a formal proceedings and somewhat technical. In such conection, the word 'upon' is not used or appropriate, it is one thing to 'enter' a piece of land, and a wholly different act to 'enter *upon*' a great domain like Oklahoma. Evidently the latter expression, was used to prevent the people from coming into the lands—the territory—and cannot reasonably be restricted to a technical 'entry' of a specific tract."

To claim that any and all persons could go into and over the Territory to "inspect the land" and remain there up to noon on the 22d of April, provided they did not "enter upon and occupy" any particular tract, is simply absurd; such construction of the act would render it nugatory; and the mass of the people did not so understand it, anxious as they were to secure homes in this Territory; they assembled along the borders and as law-abiding citizens awaited the hour fixed for their entry into it. A few attempted to violate or
192 evade the act. Blanchard proposed to violate it and escape the consequences by fraud and deceit. Cook thought to evade its operation by procuring his servant to violate it for him. The application of each to make entry will be rejected.

Your decision is affirmed.

The papers accompanying your letter of July 8, 1890, and the papers herein referred to are herewith returned.

Respectfully, GEO. CHANDLER,
First Assistant Secretary.

Indorsed: General Land Office Division A July 24 1891.

Vol. 19, No. 142. J. I. P.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *February* 25, 1895.

WILLIAM T. MCMICHAEL
v.
SAMUEL MURPHY.

Involving the SW ¼ of Sec. 27, T. 12 N., R. 3 W., Oklahoma Territory.

The Commissioner of the General Land Office.

SIR: I have considered the appeal of the plaintiff in the above entitled cause from your office decision of January 18, 1893, rejecting his claim to the SW ¼ of Sec. 27, T. 12 N., R. 3 W., Oklahoma

Territory, and holding intact homestead entry No. 223, made November 30, 1890, by the Defendant for said tract.

Briefly stated, the facts in the case are as follows:—

193 April 23, 1889, Ewers White made homestead entry No. 6 for said tract.

"H." April 24, 1889, Charley J. Blanchard made homestead application for the same tract.

May 1, 1889, Vestal S. Cook made homestead application for the land.

The application of Blanchard and Cook were rejected because of White's entry.

April 27, 1889, Blanchard filed an affidavit of contest attacking White's entry.

May 1, 1889, Cook also filed an affidavit of contest.

July 16, 1889, the case went to trial, each party charging that the other two had entered the Territory of Oklahoma prior to 12 o'clock noon of April 22, 1889, in violation of law and the President's proclamation.

The local office recommended the cancellation of White's entry, and dismissed the contests of both Cook and Blanchard. On appeal your office, on March 7, 1890, affirmed this decision, and on further appeal, this Department, on July 21, 1891, (13 L. D. 66), affirmed your office decision as to Cook and Blanchard; White pending appeal here, having filed his relinquishment, November 29, 1890.

Your office letter "H" of August 15, 1891, transmitted notice of said departmental decision to the local office, with the advice that the case was closed, White's entry canceled, and the tract open to the first legal applicant. Subsequently, on September 11, 1891, on further examination of the record, it was discovered that while the case of Blanchard *v.* White *et al.* was pending on appeal, an affidavit of contest against White's entry had been filed by one Charles Renfro, based on the same charges made by the other parties, with the additional charge that for the reasons urged against White, neither Blanchard nor Cook were qualified entrymen. That on July 22, 1889, one Johnson M. Fuller had filed an affidavit of contest against White's entry, on substantially the same charges. That on

194 August 31, 1889, William F. McMichael filed an affidavit, alleging that he had made settlement on the land June 3, 1889, when he was ejected therefrom by the military, at the instance of White. That his rights were superior to those of White, Blanchard or Cook, all of whom were disqualified by reason of having entered the Territory during the prohibited period, and that the rights of Renfro and Fuller were junior to his. That he made an application to enter said tract July 19, 1889, which was rejected because it conflicted with White's entry. That he was the only qualified settler on the tract entitled to make entry thereof, and that he protested against any other person being permitted to enter the land.

January 1, 1890, Renfro made application to enter the land, and on its rejection he appealed to your office.

March 11, 1890, Levi Holt, through an agent, filed a soldier's declaratory statement for the land, which was suspended, pending

final action on the case of Blanchard *v.* White *et al.*, and on Nov. 29, 1890, White's entry was canceled on his relinquishment, and this defendant was permitted to make homestead entry No. 223, as stated. White's relinquishment was filed on Saturday. On the following Monday bright and early this plaintiff was on the land with his family, and has resided there ever since. On December 4, 1890, the plaintiff filed another application to enter said land, it having been learned that his former application did not correctly describe the land. It was rejected for conflict with defendant's entry. Plaintiff appealed, alleging that the defendant's entry was wrongful in that he, with others, had conspired to have the defendant enter said land, in order to plat it as an addition to Oklahoma City, and re-affirming his prior right by virtue of his settlement, as above set forth, and alleged that *White's relinquishment was the result of his protest and contest.*

Your office, September 11, 1891, by letter "H," dismissed the contests of Renfro and Fuller, rejected Holt's application, and ordered a hearing between this plaintiff and defendant. That hearing was had February 15, 1892, before the local office, both parties being present in person and by attorney. The local office decided adversely
195 to the plaintiff, who appealed to your office, which, on January 18, 1893, affirmed the decision of the local office. From that decision the plaintiff has appealed here. Renfro and Fuller having failed to appeal from the decision against them, are eliminated from the case.

Your office decision of January 18, 1893, closed the case as to Holt, on the ground that he had been notified of your office decision of September 11, 1891, and had failed to appeal therefrom. Since McMichael's appeal has reached this Department from your office decision of January 18, 1893, the appeal of Holt from your office decision of September 11, 1891, has been forwarded here. It appears that it was regularly filed in due time, and that the delay in its transmission was due to the inadvertence and negligence of the local office in allowing it to become misplaced among the papers there. Said appeal was duly served on both McMichael and Murphy, so that the controversy becomes a three-cornered one between McMichael, Murphy and Holt.

McMichael bases his claim on his alleged settlement on the tract in May or June, 1889, while it was covered by White's homestead entry; that White, Blanchard and Cook were all disqualified by reason of having entered the territory during the prohibited period; that White's entry was therefore void; McMichael the first qualified settler on the tract, and that White's relinquishment was filed because of his protest affidavit, filed August, 1889, and that Murphy's entry is void because in violation of Rule of Practice No. 53.

Holt bases his claim on his application filed March 11, 1890, four days after the decision of your office, holding White's entry for cancellation, and before appeal was taken therefrom.

Murphy's claim is based solely on his entry, made November 29, 1890, on the filing of White's relinquishment.

McMichael urges strenuously that White's entry was void and asks a specific ruling on that proposition.

Although White had entered the Oklahoma country during the prohibited period, yet his homestead entry was *prima facie* valid. Its invalidity had to be established by extraneous evidence, and a judgment as to its illegality pronounced by a competent
196 tribunal. Had that never been done, the tract covered by said entry would have remained forever segregated from the public domain; so far, at least, as the unquestioned legality of the entry itself could accomplish that fact. Hence it cannot be regarded as void, but voidable only. True, White lacked one of the essential qualifications of an entryman for Oklahoma lands. But it has been held that the entry of an alien (who also lacks the very essential qualifications of citizenship) is not void but voidable. (Leary *v.* Manuel, 12 L. D., 345; Hollants *v.* Sullivan, 5 L. D., 118; Pfaff *v.* Williams *et al.*, 4 L. S., 455; St. Paul Minneapolis and Manitoba, R. R. Co., *v.* Forseth, 3 L. D., 446.) Being voidable only, White's entry segregated the land so long as it remained of record. (Leary *v.* Manuel, *supra.*) Hence he was entitled to its possession, it being exempt from further settlement or entry, until his entry was canceled or declared forfeited. (Carroll *v.* Stafford, 3 Howard, 441; Witherspoon *v.* Duncan, 4 Wall. 410.)

McMichael's settlement on the tract in question in May or June, 1889, while it was covered by the homestead entry of White, gave him no rights whatever as against either White or the government. (McAvinney *v.* McNamara, 3 L. D., 552; Kruger *v.* Dumbolton, 7 L. D., 212; Hall *v.* Levy, 11 L. D., 284; Lough *v.* Ogden, 17 L. D., 171.)

It has been held by the Department that where a settler is residing on a tract covered by an entry, at the date of the cancellation thereof his rights as a settler attached *eo instanti,* without any specific act of settlement on his part. (See authorities above cited, and Pool *v.* Moloughney, 11 L. D., 197, and authorities there cited.) But the right of a settler in such case attaches only where he is in possession of the tract when the entry is canceled. (Barrott *v.* Linney, 2 L. D., 26; Corrigan *v.* Ryan, 4 C. L. O., 26.)

McMichael was not on the tract when White's entry was canceled. He cannot be heard to say that he was deprived of any right on account of his ejection by White, because he had none to lose. He was a trespasser on the tract, and White had a right to eject him therefrom. Hence he acquired no rights whatever by virtue of his alleged settlement. Had White permitted him to remain on the
197 tract, and had he been residing there when White's entry was canceled, a different question would be presented. When White therefore filed his relinquishment November 29, 1890, McMichael had no right or legal claim whatever to said tract, unless that relinquishment was caused by McMichael's protest filed August 31, 1889, which would have entitled him to the preference right of entry. And this brings us to the examination of that question.

That protest I have examined with care. It was filed not long after the local office had held White's entry for cancellation, and

refers to that fact. It sets forth the entire history of said tract from the opening of the territory down to the day said instrument was filed. It declares the entry of White to be void, and the claims of Blanchard and Cook of no effect for reasons hereinbefore stated. It asserts that McMichael's claim to the land is paramount to all others, by reason of his settlement as above set forth. It recites the ejectment of McMichael from said tract by the military at the instigation of White, and that he is kept off said tract by White's threats and intimidations. After giving an account of the rejection of McMichael's application to make homestead entry on July 19, 1889, it states that "affiant herewith tenders his application and affidavits to enter said land as a part of this protest, and now asks that when said entry of White is canceled, that they be received and filed by the U. S. Land Office and a certificate be executed to him by the receiver."

He then protests against any other person being permitted to enter said land, and requests that if any such attempt is made that a hearing as to affiant's rights be had, and that he be awarded the right to enter said land.

Such is the instrument which McMichael claims caused White's relinquishment, and entitles him to the preference right of entry as against Murphy. It is an information, a declaration, a protest, and a prayer. An information of all the facts and circumstances connected with said grant down to the filing of said affidavit; a declaration of what McMichael conceives to be his legal rights in the premises; a protest against any invasion, abridgement or subversion of those rights; and a prayer, that when White's entry is can-
198 celed—presumably on the contest then pending, and in accordance with the decision of the local office, recently rendered therein—those rights be recognized and established by the acceptance of his application accompanying said affidavit.

It does not pretend to be an affidavit of contest. Its charges against White's entry are based on the decision of the local office in the contest of Blanchard and Cook against White, then pending. No hearing is asked to prove the charges against White's entry; and no steps were ever taken on that affidavit to secure the cancellation of White's entry. A hearing is asked only in the event that anyone, other than McMichael, seeks to enter the land, and then only for the purpose of establishing his prior right by virtue of his settlement on said tract.

From the language of that affidavit it is apparent that McMichael expected that the decision of the local office in the contest then pending would be affirmed, White's entry canceled, and the disqualification of *of* Blanchard and Cook established. When that occurred, he believed his rights, by virtue of his settlement, would entitle him to enter said tract as against all others, and he was content to wait.

Not being an affidavit of contest, nor designed to effect the cancellation of White's entry, it is inconceivable how it could confer any rights on its author that he could assert against one claiming under a subsequent relinquishment.

In the case of De Mars *v.* Donahue *et al.*, 12 L. D., 113, it is held,

in substance, that where an affidavit of contest is filed in the local office, without any intention or purpose of instituting proceedings thereon, it does not confer on the party executing it the status of a contestant, nor secure to him any right that can be asserted against any one claiming under a subsequent relinquishment. That holding is evidently in point here. The affidavit here is not a contest affidavit, it is true. It was filed for the sole purpose of keeping alive McMichael's claim, and giving notice thereof to the world. But he is claiming under it the rights and status of a contestant. In view of its character and the purpose for which it was filed, this he
199 cannot do in the light of the decision referred to above.

Hence Murphy's entry is secure as against the claims of McMichael based on his alleged settlement and preference right of entry.

The contention that Murphy's entry is void because in violation of Rule 53 of the Rules of Practice, is of no force. In the case of Hertzog *v.* Demer, 13 L. D., 590, it is held in substance that where a relinquishment is filed during appeal in a contest case, the land is open to the first legal applicant, under the act of May 14, 1880 (21 Stat., 140), and that No. 53 of the Rules of Practice does not apply to such a case, because it is to that effect in conflict with the act of Congress. Therefore, when Murphy presented his application, on White's relinquishment, it was accepted by the local office on the theory that he was the first legal applicant. See also Hoyt *v.* Sullivan (2 L. D., 283).

One of the rules of this Department, established by a number of decisions, is, that a judgment of your office, holding an entry for cancellation, is final so far as that tribunal is concerned, and at once throws the land involved open to entry. That an application to enter made after the date of said judgment and within the time allowed for appeal, should be received, but not placed of record until the time for appeal has expired, or the rights of the entryman on appeal has been determined by this department. In other words, that such an application shall be received subject to the rights of the entryman on appeal. (John H. Read, 6 L. D., 563; Henry Ganger, 10 L. D., 221; Thomas Rathbun, 12 L. D., 243; Perott *v.* Connick, 13 L. D., 600.)

Your office held White's entry for cancellation March 7, 1890. Four days thereafter Holt filed his application to make a soldier's additional homestead entry for said tract. It was received by the local office, but not placed of record, in compliance with the rule above stated. When White's relinquishment was filed on November 29, 1890, that application of Holt's was pending, and should have been placed of record, or the rule enunciated by the authorities above cited is meaningless. It follows, therefore, that the action of the local office in allowing Murphy to make entry of the tract, instead of placing Holt's application of record, was erroneous.
200 It may be urged that the principle involved in the rule above stated will inure to the benefit of McMichael and give him a prior right by virtue — his application filed with his affidavit of August 31, 1889. But the distinction lies in the fact that

the decision of the local office is not final, but is subject to the supervision of your office, and to its approval or disapproval. (Samuel H. Vandervoort, 7 L. D., 86; Dudgeon *v.* Seeley, 3 L. D., 567; Morrison *v.* McKissick, 5 L. D., 246, 247.)

Your office decision of January 18, 1893, between McMichael and Murphy, is affirmed. That of September 11, 1891, rejecting Holt's application, is modified in this: That inasmuch as Murphy's entry is of record, he will be allowed thirty days from date of notice of this decision to show cause why his entry should not be canceled, and Holt's application placed of record.

The papers transmitted by your office letter "H" of April 25, 1893, are herewith returned.

Very respectfully, HOKE SMITH, *Secretary.*

Registry return receipt sent — 3 / 25, 1895.

Reg. No. 1181 from Post Office at Oklahoma, Okla.
Reg. Letter } Addressed to HON. SAM'L MURPHY,
Reg. Parcel } *Oklahoma, O. T.*

After obtaining receipt below, the Postmaster will mail this card, without cover and without postage, to address on the other side.

Received the above described registered { Letter. / Parcel.

(Sender's name on the other side.)

Sign on dotted lines to the right.
When delivery is made to other than addressee, the name of both addressee and recipient must appear. SAMUEL MURPHY.

201 * Erase letter or parcel according to which is sent.

Indorsed.

When the registered letter or parcel accompanying this card is delivered, the Postmaster will require signature to the receipt on the other side, also on his record of registered deliveries, and mail this card without cover to address below.

A penalty of $300 is fixed by law for using this card for other than official business.

Post Office Department.
Official Business.
Post Office at ——

Stamp here name of Postoff.
Okla.
Mar. 28, 11 A. M., 1895.
Okla.
Date of delivery.

Return to:
Name of sender —— ——
Street and Number, or Post Office Box

Land Office ——
Oklahoma, Okla.

Post Office at——
County of —— State of ——

4–506.

United States Land Office.

OKLAHOMA CITY, O. T., *April 2"*, 1895.

WM. T. MCMICHAEL
vs.
SAMUEL MURPHY.

Involving right to S. W. ¼ Sec. 27, T. 12 N., R. 3 W., Covered by H. E. No. 223.

202 The Honorable Commissioner of the General Land Office.

SIR: In reference to the above entitled case, I have the honor to transmit herewith a motion for review of departmental decision, dated February 25, 1895, filed in this office March 27, 1895.

I also inclose evidence of service of notice of said decision upon the parties in interest.

Very respectfully,

B. M. DILLEY, *Register.*
LESLIE P. ROSS, *Receiver.*

"J."

Indorsed.

U. S. General Land Office, received Apr. 6, 1895, 36156.
United States Land Office, Oklahoma City, O. T.
3345 Department of the Interior L. & R. R. Div. Received Apr. 11, 1895.
Written over that date is April 2" 1895.

Register transmits motion for review of departmental decision of Feb'y 25, 1895, in contest case of McMichael *v.* Murphy involving the H. E. No. 223, S. W. ¼ of Sec. 27, Town. 12 Range 3 W.
Reference is had to letter "H" of March 13" 1895.
Clerk's initials, "J. L. M."

Motion for review.
1893-*s*4673-5. 6–822.

3345-1895. J. I. P.
19—142.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *June* 12, 1895.

WILLIAM F. MCMICHAEL
v.
SAMUEL MURPHY and LEVI HOLT.

Motion for Review.

203 The Commissioner of the General Land Office.

SIR: By your office letter "H" of April 11, 1895, you transmitted here a motion by Samuel Murphy to review and reverse the decision

of the Department in the above entitled case, dated February 25, 1895 (20 L. D., 147), and by your office letter "H" of April 16, 1895, you transmitted an amended supplemental motion for review (so called) of said decision, filed also by Mr. Murphy.

"K." The tract involved is the S. W. ¼ of Sec. 27, T. 12 N., R. 3 W., Oklahoma City land district, and before stating the assignment of errors on which the motion is based, a brief résumé of the pertinent facts in the case, as set forth in the decision complained of, so far as they affect Murphy and Holt, is deemed necessary.

On March 7, 1890, there was pending in your office, on appeal, the case of Blanchard *v.* White *et al.*, White being the homestead entryman of the tract in question. On that date your office, affirming the decision of the local office, held White's entry for cancellation. Four days thereafter, viz: on March 11, 1890, and before any appeal from said decision had been taken, Levi Holt, through his attorney in fact, one Julius V. Briesen, filed a soldier's declaratory statement and application to make homestead entry of said tract under section 2309 of the Revised Statutes of the United States. That application, so says the decision complained of, "was received at the local office but not placed of record," but "was suspended pending final action on the case of Blanchard *v.* White *et al.*, following the rule "that an application to enter, made after the date of judgment and within the time allowed for appeal, should be received, but not placed of record until the time for appeal has expired, or the rights of the entryman on appeal had been determined by this Department" citing John H. Reed (6 L. D., 563), and cases following it.

While the case of Blanchard *v.* White *et al.*, was pending on appeal here, and before it was decided (13 L. D., 66), White, on November 29, 1890, relinquished his homestead entry to said
204 tract, and Murphy was allowed to make homestead entry thereof. The decision complained of held that action of the local office to be erroneous, that on White's relinquishment the pending application of Holt should have been placed of record, and your office decision of September 11, 1891, rejecting Holt's application, was modified in this: "That inasmuch as Murphy's entry is of record, he will be allowed thirty days from date of notice of this decision to show cause why his entry should not be canceled, and Holt's application placed of record."

The grounds upon which that decision is attached by the motion for review are substantially as follows:

It is alleged *first* that said decision is erroneous, in this—that as a matter of fact Holt's application filed March 11, 1890, was not "suspended" as stated in said decision, but that it was *rejected* by the local office, that service of notice of said rejection and of his right of appeal in thirty days therefrom was acknowledged in writing, by Briesen, Holt's attorney in fact, and that an inspection of the indorsements on the original application of Holt, will disclose these facts; that Holt never appealed from the alleged rejection of his application, and hence lost all his rights in the premises; and that after

the local office had rejected his application they had no right to hold it in suspense. And in support of this contention there is filed with the motion a copy of Holt's application with the indorsements thereon. The original application of Holt, filed with the papers in the case of Blanchard *v.* White *et al., supra,* has the following indorsements on the back thereof, except the numbers, which are mine, and are placed there for convenient reference—

1. Holt. No. —. Received for filing Mar. 11—1890 at Guthrie Land Office Ind. Ter.
2. Presented March 11, '90. Held in suspense during right of appeal of entryman and contestants, Blanchard and Cook Ewers White and for consideration of pending prior adverse claims, and applications to enter.
205 3. [Rejected for conflict with H. E. No. 6, made April 23d 1889 by Ewers White. See Con. Doc. 13—459—515. Thirty days for appeal.]* Fees rendered. Fees tendered.
C. M. BARNES, *Rec'r.*
C. B. B.

The indorsement indicated by the figure 1 is made from a red ink stamp, except the word "Holt" which is written in pencil; that indicated by the figure 2 is in pencil; that indicated by the figure 3 is in ink, and has pencil marks drawn diagonally across it in the shape of a letter "X," apparently with the intention of cancelling all of it except the words "Fees tendered," and the signature of the receiver. If that were the intention, it would leave the uncanceled indorsement at "2" as the apparent action of the local office, with the signature of the receiver attached thereto.

There is also this indorsement on the back of said application—

"I acknowledge service of notice of the rejection of the within application and of my right of appeal within 30 days from March 11, 1890. Julius V. Briesen."

It would appear from these indorsements that when the application was presented by Briesen the indorsement indicated at "3" was placed on the back thereof by the receiver, and that Briesen, believing that to be the action of the local office, promptly acknowledged service of notice thereof. But there is no evidence in the record anywhere that the register ever concurred in that action of the receiver, as required by rule 66, Rules of Practice. Indeed, the evidence is that the joint action of the local officers was as indicated by the indorsement at No. "2." The letter of the local officers, dated April 11, 1890, on file in the case of Blanchard *v.* White, *supra,* gives the status of said tract at that date, and transmits to your office for its consideration and instruction in relation thereto, the
206 application of Holt, and other papers, and contains this statement—"On March 11-90 Levi Holt, by agent, tendered a soldier's statement which we hold in 'suspense' pending right of ap-

[*Words and figures enclosed in brackets erased in copy.]

peal of entryman and contestants and for consideration of pending prior adverse claims and applications to enter." This letter signed by the register and receiver shows conclusively what their joint action on said application was. The reasonable conclusion as to the indorsement at "3," then, is that the receiver, after making it, discovered, on consultation with the register, its error, and that it was then canceled, as indicated by the pencil marks drawn across it, and that the indorsement at "2" in pencil was then made.

There is no statement or suggestion on their letter of April 11, *supra*, that the application was ever rejected by them. The uncanceled indorsement in pencil on the back of said application corresponds with the statement of the register and receiver in their report, and your office decision of September 11, 1890, and of January 18, 1893; both declare that said application was "suspended." Indeed, the record evidence is so uniform and overwhelming on that point, that in my judgment, it removes the question fror discussion, and renders that ground on which the motion for review is based untenable.

It is further urged in said motion that Holt's motion for review of your office decision of September 11, 1891, rejecting his application and his appeal from said decision were both filed out of time.

By letter of January 30, 1892, the local office at Oklahoma City, notified your office that on October 26, 1891, notice of your office decision of September 11, 1891, had been mailed to Briesen, at Guthrie, Oklahoma Territory, by registered letter, but had been returned to the local office unopened, and that on December 4, 1891, (instead of December 7, 1891, as stated in the motion), Holt had filed a motion for review of said decision.

Notice of your office decision of September 11, 1891, having been transmitted by the local office through the mails, Holt had forty days from October 26, 1891, in which to file his motion for review.
207 (Rodgers v. Herington, 17 L. D., 295.) He filed it on December 4, 1891, which was the 39th day of the period within which it should have been filed, and hence was in time.

Your office, on April 16, 1892, denied his motion for review. On May 17, 1892, he received notice of that action, transmitted by the local officers through the mails. When notices of your office decisions are so transmitted, five days additional are allowed for the transmission of the notice and five days additional for the return of the appeal. (Rule 87, Rules of Practice.) Excluding from the time allowed for appeal the time consumed by the motion for review, we find that on May 17, 1892, when notice of your decision denying said motion was received, thirty-nine days of the seventy allowed for appeal and transmission thereof had passed. Nine of these thirty-nine days, however, were carved out of the additional days allowed for filing the motion for review, as held in Rodgers *v.* Herrington, *supra*. The seventy days allowed Holt in which to appeal, included ten days additional granted under Rule 87 of Practice. It is evident, therefore, that if the thirty-nine days be deducted from the seventy, it in effect robs Holt of the ten additional days granted by Rule 87, in which to file his appeal, and would be in direct opposition to the ex-

press terms of that rule. I am decidedly of the opinion that the additional ten days allowed for the filing of a motion for review is entirely separate and distinct from the ten days allowed for filing an appeal. Deducting the thirty-nine days from seventy left thirty-one days. The additional ten days allowed under Rule 87, *supra*, extended the time in which his appeal should be filed to forty-one days from May 17, 1892. He filed it on June 23, 1892, or on the thirty-seventh day of the period within which it should be filed, and was therefor in time.

Hence the allegation that the motion for review and appeal were not filed in time is also untenable, and cannot be sustained.

But it is contended that Holt's appeal was not filed in the General Land Office until April 21, 1894, more than two years after receipt of notice of your office decision of September 11, 1891. Ad-
208 mitting that allegation, it was not through any fault of Holt's that the filing of his appeal in the General Land Office was delayed, but through the carelessness and neglect of the local officers, and he cannot be held to have lost any rights through their neglect, when he is guilty of no laches himself.

But it is further alleged as a ground for the review of the decision complained of that at the time Holt filed his application to enter the tract here involved, to-wit: on March 11, 1890, there was pending in your office his appeal from a rejection by the local office at Guthrie, of an application of his made August 31, 1889, to enter another and different tract from that here involved. That on April 19, 1890, there was filed in the local office what purported to be a withdrawal of said application and a dismissal of said appeal by Holt. That on May 3, 1890, Holt made an affidavit and filed it in the local office in which he stated that the pretended withdrawal of his application to enter and dismissal of his appeal was a forgery, and that he *had not withdrawn* his application to file on said land. It is further shown that on January 16, 1891, your office sustained Holt's appeal and allowed him thirty days in which to make entry of the tract embraced in his first application. But it is not shown, nor asserted, that he ever did make entry of said tract.

It is earnestly contended by counsel for Murphy that Holt's affidavit of May 3, 1890, is conclusive evidence of the fact that he had not abandoned his first application nor his appeal from its rejection, and that he was seeking to speculate on his homestead right as a soldier, and that hence his application of March 11, 1890, was in bad faith as his affidavit of May 3, 1890, with reference to his former filing shows.

It will be observed that the last question is an entirely new one; that it has never been in the case before, and is wholly outside the record on which the case was originally decided.

It is insisted by Murphy's counsel, however, that it may be
209 considered here; that the Department may, on review, consider any material question which, it appears from the record, was not considered in the original disposition of the case, and they refer to Hemsworth *v.* Holland (8 L. D., 400); Pueblo of San Francisco (5 L. D., 443).

Those cases are not in point. The first and last ones hold in effect that questions properly in the record, which have been overlooked in the original disposition of the case may be considered on motion for review. And the second case cited does not touch on the question here presented, but incidentally treats of the powers and jurisdiction of the land department. The principal questions there involved being whether or not a patent issued to the city of San Francisco could be recalled, and whether one Secretary of the Interior could reverse the decision of his predecessor. However, in the case of Huling *v.* Eddy (9 L. D., 337), it is squarely held "that review will not lie for the consideration of a question not in issue when the original decision is rendered." See also United States *v.* Montgomery *et al.*, on review (12 L. D., 503.)

Unquestionably this matter is one for Murphy to present in the showing to be made by him, why his entry should not be canceled, and Holt's placed of record. For the reasons stated, therefore, Murphy's motion for review is denied.

Since the consideration of the motion for review filed by Murphy, there has also been filed a motion by McMichael to review said departmental decision of February 25, 1895. He alleges nine errors in said decision, as a basis for his motion for review. He alleges, among other things, that his application to enter said tract, filed in the local office with his protest on August 31, 1889, was pending there at the date White filed his relinquishment, and that under the rule laid down in the decision complained of, with reference to Holt's application, his application should have been placed on record instead of Holt's, because first filed, and he alleges that the Department did not pass on that point in the decision complained of. By reference to the next to the last paragraph of that decision, it will be seen that the very point here raised was passed on. But it might be
210 added to what there is said, that his (McMichael's) application to make entry was filed at a time when the tract in question was still segregated by White'e entry, and that no rights could be acquired by an application at that time. Holt's application, on the contrary, was filed at a time when, under the rulings of the Department, it might be received and held subject to the rights of the entryman on appeal, or of the preferred rights of the contestant.

He also insists that when Holt filed his application, he was residing on the land, and that while such residence and settlement gave him no rights as against White or the United States, they did, as against every one else, including Holt. The rule in such cases is that the rights of a settler residing on the land covered by an entry attach *eo instanti*, on the cancellation of the entry, as stated in the decision sought to be reviewed. But they attach only where he is in possession of the tract when the entry is canceled (see decision). And as McMichael was not in possession of said tract when White's entry was canceled on his relinquishment, he acquired no rights by being on the land when Holt filed his application, as against Holt, or any one else.

He also insists that he never received any notice of Holt's appeal from your office decision of September 11, 1891. The appeal filed

by Holt has the affidavit of his attorney attached that he had, by registered letter, mailed a true copy of said appeal and specification of errors and argument to both McMichael and Murphy, and also attached thereto are two post-office receipts, one showing that registered letter no. 1004 was received June 23, 1892, addressed to Hon. Samuel Murphy, Oklahoma, Oklahoma Territory, and the other showing that registered letter No. 1005 had been received addressed to W. F. McMichael, at the same place.

This is sufficient evidence of service of notice of said appeal and specification of errors and argument thereon (see Rules 94, 95 and 96, Rules of Practice).

He also urges as against Murphy that he never appealed from the decision of your office of September 11, 1891, holding that
211 his entry was illegally allowed, and had never complied with the order made in that decision to show cause why his entry should not be canceled, and McMichael allowed to enter the land. The hearing ordered by that decision, rendered an appeal by Murphy, from the holding that his entry was illegally allowed, unnecessary, to preserve his rights. The result of that hearing showed that McMichael had no rights that impaired the validity of Murphy's entry, and it was held intact, as stated in the decision complained of.

He also stated that at the date the decision sought to be reviewed was rendered, to-wit, February 25, 1895, Levi Holt was dead, and that there is no law in existence that warrants or authorizes the substitution of his heirs in these proceedings. It has been held frequently by the Department "that an application to enter is equivalent to an actual entry, so far as the rights of the entryman are concerned." Goodale *v.* Olney (12 L. D., 324), Samuel J. Haynes (Id., 645). This rule has been held to apply only in cases where the land involved was subject to entry, and the application has been improperly rejected. See Goodale *v.* Olney, on review (13 L. D., 498); Maggie Laird (13 L. D., 502). But when Holt filed his application it was properly filed under the rules of the Department, as stated in said decision, and was held in abeyance, as therein stated, and when White's relinquishment was filed, November 29, 1890, the failure of the local office to place Holt's application of record was in effect a wrongful rejection of it, and brings him squarely within the rule laid down in the last two cases cited. If, then, his application was equivalent to an entry, so far as his rights were concerned, Holt's death does not prevent the substitution of his heirs in these proceedings. It needs no citation of authority to establish the proposition that where an entryman dies before completing his entry, his heirs may make final proof and payment, and patent shall issue to them. Holt's heirs stand in the same position as though his entry had been of record, unless the showing to be made by Murphy shows Holt to have been disqualified when his rights attached under his application.

212 The other question presented by the motion were either fully considered in the decision complained of, or were identical with those presented by Murphy's motion, and hence will not be further considered here.

McMichael's motion for review is also denied, with instructions that if Holt be indeed dead, his heirs may be substituted in these proceedings in his stead.

Very respectfully, HOKE SMITH, *Secretary.*

"H." DEPARTMENT OF THE INTERIOR, H. W. S.
J. F. D. GENERAL LAND OFFICE,
333–1890. WASHINGTON, D. C., *December* 18, 1897.

WILLIAM T. McMICHAEL
vs.
SAMUEL MURPHY.

H. E. No. 223, Made Nov. 29, 1890, for SW ¼ Sec. 27, T. 12 N., R. 3 W., F. C. No. 2764, June 16, 1897.

Register and Receiver, Oklahoma, Okla.

GENTLEMEN: I am in receipt of your letter of December 7, 1897, forwarding proof of notice and reporting no appeal or other action taken from the decision of this office of August 10, 1897, sustaining your action dismissing the protest of William T. McMichael involving H. E. No. 223 made November 29, 1890, by Samuel Murphy for SW ¼ Sec. 27, T. 12 N., R. 3 W., F. C. No. 2764, June 16, 1897.

In view of your report the case is hereby closed leaving Murphy's entry intact.

213 & 214 The entry will be examined in regular order with a view to passing the same to patent.

Respectfully, BINGER HERMANN,
Commissioner.

UNITED STATES LAND OFFICE,
OKLAHOMA, OKLA., *June* 16, 1897.

Involving the SW. ¼ Sec. 27-12-3 W., I. M.

Final Proof by Samuel Murphy.

This protest filed by William T. McMichael is directed against the heirs of Holt and attacks their right to make entry of the land in controversy as decided by letter "H," May 8, 1897.

In our judgment all the issues between McMichael and Murphy have been adjudicated adversely to McMichael by the Department. The entry of Murphy as between him and the Holt heirs was to be canceled only in case they exercised their privilege of filing on the land, as shown by letter "H" of May 8, 1897, and as said heirs, through their attorneys of record, have filed in this office a complete release and waiver of all their rights to said land, we see no reason why Murphy's proof should not be accepted, and final receipt and certificate issued.

The protests of McMichael are therefore dismissed, and final receipt issued. 30 days for appeal.

B. M. DILLEY, *Register.*
ANTON H. CLASSEN, *Receiver.*

215 4–207.

"H." DEPARTMENT OF THE INTERIOR, H. W. J.
GENERAL LAND OFFICE,
WASHINGTON, D. C., *January* 6, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of the relinquishment of the Holt Heirs, embracing the S. W. ¼ Section 27, Twp. 12 N., R. 3 W., I. M., executed by C. W. Ransom in the contest case of McMichael *vs.* Murphy *et al.* is a true and literal exemplification of the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the City of Washington, on the day and year above written.

[SEAL.] BINGER HERMANN,
Commissioner of Gen'l L. O.

UNITED STATES LAND OFFICE,
OKLAHOMA, O. T., *June* 14, 1897.

In the Matter of the Preference Right of the Heirs of Levi Holt, Deceased, to Enter the SW. ¼ of Sec. 27, Twp. 12 N., of R. 3 W., I. M.

Waiver of Right of Entry.

Comes now the Heirs of Levi Holt, deceased, by their attorney of record, C. W. Ransom, and hereby waive their right to perfect the right of the said heirs *of* make *homestead entry* of the said SW. ¼ Sec. 27, Twp. 12 N. of R. 3 W. I. M., said right to make entry being accorded to said heirs by the Hon. Secretary Interior Depart-
216 ment in the case of the Heirs of Levi Holt *vs.* Samuel Murphy, and hereby on behalf of said heirs withdraw all claims to said tract of land, this instrument being made in consideration of the receipt of Two Thousand Dollars to them in hand paid, by the said Samuel Murphy.

"L." C. W. RANSOM.

Subscribed and acknowledged before me this 14th day of June, A. D. 1897.

B. M. DILLEY, *Register.*

Indorsed.

Waiver of right to enter SW. ¼ Sec. 27, Tp. 12 N. Range 3 West, by Heirs of Levi Holt, deceased. Filed June 16, 1897. B. M. Dilley, Register.

4–207.

"H." DEPARTMENT OF THE INTERIOR,
20949–1901. GENERAL LAND OFFICE,
Doc. 5–6895. WASHINGTON, D. C., *Dec. 10th,* 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copies of the following papers in the case of Wm. J. McMichael *vs.* Samuel Murphy and Levi Holt, viz: Letter of transmittal of the Commissioner of the General Land Office, dated July 5, 1895; copy of final proof by Murphy; Appeal of Levi Holt, filed June 23d, 1892; motion for review and affidavit and exhibit filed May 21, 1895 by L. M. Keys, Att'y for McMichael, and Holt's answer to Murphy's showing under Order to show cause, filed April 10, 1895, true and literal exemplifications, erasures and corrections as appear therein.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the City of Washington, on the day and year above written.

[SEAL.] BINGER HERMANN,
Commissioner of the General Land Office.

217 4–369.

Homestead Proof—Testimony of Witness.

H. OVERHOLSER, being called as witness in support of the Homestead entry of Samuel Murphy, for S. W. ¼ Sec. 27–12–3–W., testifies as follows:

Ques. 1. What is your name, age and Post-office address?

Ans. H. Overholser; 51 yrs. of age; Oklahoma, Okla.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No sir.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Prairie farming land.

"M." Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. Settled in November 1890; actual residence within the 6 months after he filed.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (if settler is unmarried, state the fact.)

Ans. They have.

Ques. 7. For what period or periods have the settlers been absent from the land since making settlement, and for what purpose; and

if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. Not been absent to speak of.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. 20 acres; 6 seasons.

Ques. 9. What improvements are on the land, and what is their value?

218 Ans. House; orchard; all fenced; value of improvements $300.

Ques. 10. Are there any indications of coal, salines, or minerals or any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. Not that I know of.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not that I know of.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No sir. Yes sir.

(Sign plainly your full christian name.)

H. OVERHOLSER.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 20 day of May, 1897, at my office.

ANTON H. CLASSEN, *Receiver.*

(4–369.)

Homestead Proof—Testimony of Witness.

JAMES GEARY, being called as witness in support of the Homestead entry of Samuel Murphy for S. W. ¼ Sec. 27–12–3 W., testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. James Geary; 53 yrs. of age; Oklahoma, O. T.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

219 Ans. No sir.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land.

Ans. Prairie farming land.

Ques. 5. When did claimants settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. Settled on the land in the Spring of 1891. I think: made

his actual residence in spring of 1891; within the 6 months after he filed.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. They have.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. Not been absent more than a week or so and then his family remained on the land during his absence.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. House; stable, I think; well on the place; place all fenced; value of his improvements $600; 4 or 5 acres of orchard.

Ques. 10. Are there any indications of coal, saline, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. Not that I know of.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No. I do.

(Sign plainly with full christian name.)

JAMES GEARY.

220 I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 20 day of May, 1897, at my office.

B. M. DILLEY, *Register.*

4–369.

Homestead Proof—Testimony of Claimant.

SAMUEL MURPHY, being called as a witness in his own behalf in support of homestead entry No. 223, for S. W. ¼ Sec. 27–12–3 W. testifies as follows:

Ques.1. What is your name, age, and post-office address?

Ans. Samuel Murphy; 52 yrs. of age: Oklahoma, Okla.

Ques. 2. Are you a native-born citizen of the United States, and if so, in what State or Territory were you born?

Ans. Yes sir. State of Arkansas.

Ques. 3. Are you the identical person who made homestead entry, No. 223, at the Oklahoma, Okla. land office on the 29th day of November, 1890, and what is the true description of the land now claimed by you?

Ans. I am. The S. W. ¼ Sec. 27–12–3 W.

Ques. 4. When was your house built on the land and when did you establish actual residence therein.

(Describe said house and other improvements which you have placed on the land, giving total value thereof.)

Ans. Built my house in March 1891; moved therein between June 1st and 10th, following; frame house, original, contained 3 14 ft. rooms; addition attached 14 x 14; stable; orchard; all fenced; value of improvements $600; 80 acres in cultivation.

Ques. 5. Of whom does your family consist; and have you and your family resided continuously on the land since first establishing resi- thereon? (If unmarried, state the fact.)

221

Ans. Wife and 4 children; we have

Ques. 6. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. Not been absent except for very short periods; family remained on the land during my absences.

Ques. 7. How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

Ans. 30 acres about ½ of which is under my control, 6 seasons

Ques. 8. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade and business?

Ans. No sir.

Ques. 9. What is the character of the land? Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality, and for what purpose it is most valuable.

Ans. Prairie farming land.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None at all.

Ques. 11. Have you ever made any other homestead entry? (If so, describe the same.)

Ans. No sir.

Ques. 12. Have you sold, conveyed, or mortgaged any portion of the land; and if so, to whom and for what purpose?

Ans. No sir.

Ques. 13. Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same, and state where the same is kept.)

222

Ans. No sir.

Ques. 14. Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral) made by you since August 30, 1890.

Ans. None ever made.

SAMUEL MURPHY.

I hereby certify that the foregoing testimony was read to the claimant before being subscribed, and was sworn to before me this 20th day of May, 1897, at my office.

ANTON H. CLASSEN, *Receiver.*

Final Affidavit Required of Homestead Claimants.

Section 2291 of the Revised Statutes of the United States.

I, Samuel Murphy, having made a Homestead entry of the S. W. ¼ of Range No. 3 W., subject to entry at Oklahoma, Oklahoma, under section No. 2289 of the Revised Statutes of the United States, do now apply to perfect my claim thereto by virtue of section 2291 of the Revised Statutes of the United States; and for that purpose do solemnly swear that I am a native born citizen of the United States; and that I have made actual settlement upon and have cultivated and resided upon said land since the 1st day of May, 1891, to the present time; that no part of said land has been alienated, except as provided in section 2288 of the Revised Statutes, but that I am sole *bona fide* owner as actual settler; that I will bear true allegiance to the Government of the United States; and further, that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States, except —.

SAMUEL MURPHY.

223 I, Anton H. Classen, *of* Receiver, do hereby certify that the above affidavit was subscribed and sworn to before me this 20th day of May, 1897, at my office.

ANTON H. CLASSEN, *Receiver.*

UNITED STATES OF AMERICA, *Territory of Oklahoma:*

In the Department of Interior.

Before Hon. Hoke Smith, Secretary of Interior.

WILLIAM T. MCMICHAEL, Plaintiff,
vs.
SAMUEL MURPHY, Defendant.

Motion of Plaintiff for Review.

Comes now said plaintiff and moves the Hon. Secretary of Interior for a review *od* his Decision in the above entitled cause Dated February 25, 1895, for the following reasons to-wit:

1st.

That Levi Holt was not a party to, nor interested in the above entitled cause. And Plaintiff has no opportunity to contest the claim, advance- by said Holt, in an independent and *ex party* proceeding.

2nd.

That at the time said decision was rendered, and long before as appears by the record, made on Levi Holt's appeal said Holt was

dead, and there is no rule of the department, nor law of the United States authorizing the Substitution of his heirs, in their proceedings, he not having had an entry of the tract in controversy.

"N." 3rd.

That the Hon. Secretary erred in finding and holding that said Levi Holt's appeal from the decision of the Hon. Com. of the Gen. Land office, "was filed in time, and that the delay, in transmission, was due to the inadvertence and neglect of the local office,
224 and further, in finding and holding that said appeal was ever served upon plaintiff in this cause.

4th.

The Hon. Sec. erred in holding that Holt had a suspended S. D. S. upon the tract, for the reason that his application to file his S. D. S. by his agent was by the local office rejected, and not suspended, and for the further reason that Holt did not appeal from the decision of the commissioner in the time provided by law.

5th.

That the Homestead application of this plaintiff attached to his affidavit and protest of August 31, 1889, was at the time of filing of White's relinquishment, on file in the land office and had not been rejected nor in any way by them acted upon, and the local office should have accepted and allowed that application and placed McMichael's entry of record, subject to the rights of Blanchard and Cooks upon filing of White's relinquishment.

6th.

That prior to the filing of Holt's S. D. S. upon this tract to-wit upon August 29, 1889, said Holt through his same Agent filed an S. D. S. upon S. E. Sec. 7, Twp. 11 N. R. 3 W. I. M. and afterwards sold his rights to said last named tract for a valuable consideration prior to the offering of his S. D. S. upon the tract, as more fully appears by the affidavits filed in support hereof.

7th.

That as between the plaintiff, the defendant Murphy and Levi Holt, this plaintiff was the first in the point of time to initiate and commence proceedings to acquire the title to the tract in controversy, which being true in fact, would in law, under the decision of the U. S. Supreme Court, in the case of Shepley *vs.* Cowan 91st U. S. P. 330. Paragraph 4 of Syllabi, give him a prior right.

8th.

That Hon. Sec. in passing upon this part of the case referring to the offer of Holt's S. D. S. 4 days after the decision of the Hon.
225 Commissioner, inadvertently overlooked the fact, that at that time McMichael had returned to the tract in controversy and then had thereon constructed and partly completed a residence house which was upon the land at the time S. D. S. was offered and rejected

Holt could not under the decision of the department acquire any rights as against an actual settler. While as against White and the Government McMichael's settlement and improvement could not be considered still, under the decision, in Couger *vs.* Dumblten his settlement should be considered in his favor, as between him, and Murphy and Holt.

9th.

The Hon. Commissioner of the Gen. Land Office by letter "H" of September 11, 1891 held that the "entry of Murphy was illegally allowed, and must be held subject for cancellation. (See P. 3. of letter "H" of Jan. 4-18, 1893. W. M. Stone Commissioner, Construc*t*ing said first letter.) From that holding, Murphy never at any time appealed.

Murphy was required also to show Cause why his entry should not be cancelled, by letter "H" Sept. 11, 1891. With this order he has never pretended to Comply and having utterly failed, to show any cause why his entry should not be cancelled and failed to appeal from said decision holding the entry illegal, clearly, his entry should now be cancelled. These points not having been fully argued, evidently were overlooked by the Hon. Secretary of Interior.

Wherefore Plaintiff prays that the Decision of the Honorable Secretary be revised and that he be allowed to make entry of said tract.

L. M. KEYS,
Att'y for Plain- William T. McMichael,
By L. M. KEYS, *His Att'y.*

Service of the foregoing motion and affidavit is hereby accepted and receipt of Copies acknowledged.

A. B. HAMMER,
Att'y for Murphy.

226 Before the Honorable Secretary of the Interior, Washington, D. C.

WILLIAM T. MCMICHAELS and LEVI HOLT
vs.
SAMUEL MURPHY.

Involving the S. W. ¼ Sec. 27, Tp. 12 N., R. 3 W., I. M., Oklahoma.

Pending on Order of the Hon. Secretary Requiring Murphy to Show Cause Why His Entry Should not be Cancelled.

Holt's Answer to Showing.

By the Decision herein of February 25th, 1895, Murphy was required to show cause why his entry should not be canceled, and that of Holt, under his prior application, allowed.

On March 27th, 1895 counsel for Murphy filed in the local office,

an instrument styled a "motion for Review;" but which in its every feature is a showing filed under said order.

It is asserted therein that Levi Holt on August 29, 1889 and prior to the date of his application herein filed in the Guthrie office an application to make S. D. S. for the S. E. Sec. 7 Tp. "O." 11, N. R., R. 3 W. I. M.; that said application was rejected, and an appeal from Holt was there awarded a preference right to enter said tract.

We here frankly confess the truth of the statement of this matter, as just set forth; but we as strenuously deny, any inference from that statement, to the effect that Holt ever perfected a Soldier's Declaratory Statement, for that tract or for any other tract of land, and also deny that he has ever made any application for any other tract since March 11th, 1890 the date of his application herein.

Indeed, the showing filed by Murphy does not assert that Holt has perfected a Declaratory Statement for the tract mentioned. It expressly concedes that his application was rejected, at the time that it was presented, and that an appeal from that action was prosecuted, and a right to enter granted, but not exercised.

To the end that all of the facts may be laid before your 227 Honor, we have taken steps to have the original application so filed on behalf of Holt, forwarded to the Department. A glance at that application with the original endorsements of the local officer thereon, will serve in a moment to show all of the facts in this matter.

Your Honor will find thereon the original endorsement of the Guthrie office showing that the application was presented on Sept. 16th, 1889, and then rejected for conflict with the application to amend of John Emerson; that afterwards Holt was awarded the right of entry under his appeal, or rather the right to perfect his S. D. S. and that he never exercised that right, and never perfected that Declaratory Statement. All of this appears by the original application, and the original endorsements thereon.

The question presented, therefore, by this showing is, as to legal effect of filing a prior rejected application and taking an appeal therefrom.

Upon this point we desire to cite the case of,

Hughey *vs.* Dougherty, 9 L. D., 29.

One of the assignments of error made by the appellant, in that case was in precisely, or nearly so, in the language used by Defendant's counsel in their "Motion" herein, and the fourth specification thereof.

We request a careful reading of that case, and that every point raised at this time in the case at bar, was there raised, and effectually disposed of by the holding, that an applicant may withdraw his application at any time before it is perfected and allowed or may waive his rights thereunder by filing a second application and perfecting entry for a different tract. That in short, the mere filing of a rejected application does not exhaust the homestead right and an entry may be perfected at any time thereafter for any other tract.

This right to make a second application is also recognized in the later case of,

McDonald *et al. vs.* Hartman *et al.* 19 L. D. 547.

wherein it is held:—

"The fact that an application to enter has been tendered and rejected can not operate to deprive the claimant of his right to again present his application for proper action thereon." 228

(Syllabus.)

It is, therefore, clear, that Holt did not exhaust his right to make entry, by the rejected application, or his appeal therefrom. That he had the right to at any time withdraw that application and, even if he did not formally withdraw the same, the filing of a second application on March 11th, 1890 was in effect a waiver of all his rights under the first application.

There is no escape from this conclusion, short of the coining of a new principle of law to the effect that whoever presents and files an application for any tract of land by so doing exhausts his right of entry whether the same be received and allowed or *rejected and disallowed.* Such has never been the law, and there is no foundation for such a rule either in reason or sound policy.

We ask for the application of the well settled rule of the department, cited above, to the question now presented for your Honor's consideration; that a hearing be denied, and the showing of cause held to be wholly insufficient, and that an order issue cancelling or directing the cancellation of defendant Murphy's entry, and allowing Holt to perfect his application and entry.

We call attention to the affidavit of Mrs. Holt filed with the proof of his death herein, wherein she shows that said Holt had never theretofore made or perfected a Soldier's Declaratory statement or homestead entry under the laws of the United States.

Respectfully submitted.

S. D. BAILEY,
Att'y for Heirs of Levi Holt.

Service of the foregoing Answer by true copy accepted this 10 day of April, 1895.

L. M. KEYS,
Att'y for W. T. McMichael.

April 10th.

A. B. HAMMER,
Att'y for Murphy.

229 Copy.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
OKLAHOMA, O. T., *July* 30, 1897.

WILLIAM T. McMICHAEL
vs.
SAMUEL MURPHY.

Involving the S. W. ¼ Sec. 27, T. 12 N., R. 3 W.

The Hon. Commissioner Gen'l Land Office, Washington, D. C.

SIR: In reference to the above styled case we have the honor to transmit herewith notice to dismiss appeal of McMichael filed in this Office July 29, 1897.

Said appeal of McMichael was transmitted to your office by our letter under date of July 27, 1897.

Very respectfully, B. M. DILLEY, *Register.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
OKLAHOMA CITY, O. T., *July* 27, 1897.

WM. T. McMICHAEL
vs.
SAMUEL MURPHY.

Involving the S. W. ¼ Sec. 27, T. 12 N., R. 3 W.

The Honorable Commissioner Gen'l Land Office, Washington, D. C.

230 SIR: In the matter of the protest filed in this office by William T. McMichael against the allowance of entry by the Heirs of Levi Holt and against the issuance of Certificate on the final proof of Samuel Murphy involving the S. W. ¼ Sec. 27-12-3 W. we have the honor to transmit herewith the appeal of McMichael from our action, dismissing said Protest, filed in this Office July 17, 1897.

Wm. T. McMichael was notified of said dismissal by registered letter at Oklahoma, O. T. June 17, 1897 evidence of said service enclosed. Registry return receipt card.

Very respectfully, B. M. DILLEY, *Register.*

UNITED STATES LAND OFFICE,
OKLAHOMA, O. T., *July 23rd,* 1897.

Honorable Commissioner General Land Office, Washington, D. C.

SIR: In answer to your letter of July 16, 1897 in the case of Samuel Murphy *vs.* the heirs of Levi Holt, involving the S. W. ¼ of Sec. 27, tp. 12 N. R. 3 W. we have the honor to report that the dismissal and waiver of the Heirs of Holt was transmitted to your

office, attached to the final proof papers of Samuel Murphy on the 1st, inst.

Respectfully, ANTON H. CLASSEN, *Receiver.*

231 "C." Copy. A. E. S.

1896–56937.
B. E. M.
J.

WASHINGTON, D. C., *July* 21, 1897.

Register and Receiver, Oklahoma, Oklahoma Territory.

GENTLEMEN: In reply to your letter of June 14, 1897, requesting the return of the suspended S. D. S. of Levi Holt, involving the S. W. ¼ of Sec. 27, T. *L.* N. R. 3 W., and you are hereby advised that it will be necessary for you to report the date of your letter transmitting the same to this office, in order that the said paper may be found in the files of this office.

Very respectfully, E. F. BEST,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July* 16, 1897.

SAMUEL MURPHY
vs.
HEIRS OF LEVI HOLT.

Involving Right to the S. W. ¼ Sec. 27, Twp. 2, R. 3, Covered by H. E. No. 223 Priority of Right.

Register and Receiver, Oklahoma, Okla.

SIRS: The above entitled case was closed by letter "H," of May 8, 1897, and your office directed to notify the Holt heirs thereof and in event they entered the land to cancel Murphy's entry and
232 report the same for notation upon the records of this office.

This office is now in receipt of your letter of June 28, 1897, reporting that Holt's heirs had waived their right to enter the land in question and Murphy has submitted his final proof.

You failed to furnish the waiver of the heirs of Holt to perfect Levi Holt's application for the land in question. You will promptly forward the same, so that the case may be properly closed.

Respectfully, E. F. BEST,
Ass't Commissioner.

Copy.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
OKLAHOMA, O. T., *June 28th*, 1897.

SAMUEL MURPHY
vs.
HEIRS OF LEVI HOLT.

Hon. Commissioner General Land Office, Washington.

SIR: Messrs. Ransom and Bailey, attorneys for the heirs of Holt, were notified at Perry, Okla., on May 12, 1897 of your decision of May 8, 1897, and on June 16, 1897, they filed a waiver of their preference right of entry awarded the heirs of Holt, by said decision.

This left the entry of Murphy intact, and he having adver-
233 tised to submit final proof for the same on June 10, 1897, but was prevented from doing so by his absence, on this day June 16, 1897, when waiver of the heirs of Holt was filed, he requested that his proof which was suspended on May 20, 1897, be acted upon by the local office. McMichael who had been a former contestant in this case, filed a protest against the allowance of entry by the heirs of Holt, and against the issuance of certificates on Murphy's proof, but as in our opinion, all the matters contained in said protests, *has* been adjudicated, the same were dismissed. Mr. McMichael was notified of this action, and of his right of *his right of* appeal.

We forward Murphy's proof with our regular monthly returns for the month of June, 1897.

Very respectfully, B. M. DILLEY, *Register.*

Copy.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
OKLAHOMA, O. T., *June* 17, 1897.

William T. McMichael, Oklahoma, O. T.

SIR: We enclose you herewith copy of the decision of the Register and Receiver in the matter of the Protest filed in this office against the Heirs of Holt involving the S. W. ¼ Sec. 27 T. 12, N. R. 3 W. I. M.

Yours respectfully,

B. M. DILLEY, *Register.*
ANTON H. CLASSEN, *Receiver.*

234 DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
OKLAHOMA CITY, O. T., *May 12th*, 1897.

SAMUEL MURPHY
vs.
HEIRS OF LEVI HOLT.

Involving H. E. No. 223 for the S. W. ¼ Sec. 27, T. 12 N., R. S. W.

Ransom and Bailey Att'ys, Perry, O. T.

GENTLEMEN: Letter of the Honorable Commissioner dated May 8, 1897 in reference to the above entitled case transmits copy of the decision of the Hon. Secretary of the Interior dated April 29, 1897 denying the motion for review of departmental decision of Jan'y 30, 1897 which was in favor of the Holt Heirs Case is closed. The heirs of Holt will be allowed thirty days for notice hereof within which to enter the land. In event of *his* so doing the entry of Murphy will be canceled.

Yours respectfully, B. M. DILLEY, *Register.*

Copy.

J. D. M.
1890–333

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
WASHINGTON, D. C., *May* 8, 1897.

SAMUEL MURPHY
vs.
HEIRS OF LEVI HOLT.

Involving H. E. No. 223 for S. W. ¼ Sec. 27, T. 12 N., 3 W.

235 Register and Receiver, Oklahoma, Okla.

GENTLEMEN: In reference to the above entitled case I herewith enclose a copy of the decision of the Honorable Secretary of the Interior dated April 29, 1897 which was in favor of the Holt heirs.

Said case is accordingly hereby closed notify the parties in interest.

Notify the heirs of Holt that they will be allowed thirty days to enter the land. In the event *he* so does you will cancel Murphy's entry and advise this office thereof.

Respectfully, E. F. BEST,
Ass't Commissioner.

Copy.

Vol. 24–431

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE, *April* 29, 1897.

SAMUEL MURPHY
vs.
HEIRS OF LEVI HOLT.

The Commissioner of the General Land Office.

SIR: Motion for review o*d* the Departmental decision of January 30, 1897, has been filed by Samuel Murphy. This controversy involves the S. W. ¼ of Sec. 27, T. 12, N. R. 3 W. Oklahoma land district, Oklahoma Territory.

On examination of this motion it is found that no new
236 question of law or fact is suggested. The same is therefore denied, and the papers herewith returned.

Very respectfully, C. N. BLISS, *Secretary.*

Copy.

"H."
J. ?. M.
1890–333

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
WASHINGTON, D. C., *Aug.* 10, 1897.

SAMUEL MURPHY
vs.
HEIRS OF LEVI HOLT.

Involving Right to Certain Lands Covered by Murphy's H. E. No. 223.

Register and Receiver, Oklahoma, Okla.

SIRS: The land involved in the above entitled case i*n* the S. W. ½ Sec. 27, T. 12 North, R. 3 W. Oklahoma land district, Oklahoma and said case was closed by letter "H" of May 8, 1897, and your office was directed to notify the parties in interest thereof and the Heirs of Holt that they would be allowed thirty days to enter the land and in the event of their so doing you were to cancel the entry of Murphy and advise this office thereof.

With your monthly returns of June 1897, your office transmitted F. C. No. 2764 issued to Samuel Murphy on his final proof offered in support of his H. E. No. 223, covering the S. W. ¼ of Sec. 27, T. 12 N. R. 3 W. and accompanying said certificate and final
237 proof is the waiver of the Heirs to enter said land, and a protest against the issuance of said final certificate made by William T. McMichael.

By letter of January 27, 1897, you transmitted McMichael's appeal from your dismissal of his protest, and issuance of final certificate on the proof of Murphy, and by letter of July 30, 1897,

you transmitted a motion to dismiss McMichael's appeal for want of proper service.

McMichael's appeal is hereby dismissed for the reason that it has not been served upon Murphy. So advise him.

The Heirs of Holt having filed a waiver of their right to enter the land in question, no further action is necessary, and the entry of Murphy remains intact.

Respectfully,

E. F. BEST,
Acting Commissioner.

Written across back of letter in ink.
7412.
"H" of August 10, 1897.
Samuel Murphy *vs.* Heirs of Levi Holt.
S. W. ¼ Sec. 27–12–3 W.
Dismisses appeal of McMichael for the reason that it has not been served on Murphy. Entry of Murphy remains intact.
Wm. T. McMichael notified by reg. letter at Oklahoma City, O. T. August 19, 1897.

Copy.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
OKLAHOMA CITY, O. T., *August 19th,* 1897.

SAMUEL MURPHY
vs.
HEIRS OF LEVI HOLT.

Involving Right to Certain Lands Covered by Murphy's H. E. No. 223.

238 William T. McMichael, Oklahoma, O. T.

SIR: Letter "H" of the Hon. Commissioner dated August 10, 1897 in reference to the above entitled case advises that your appeal from our action in dismissing your protest against the issuance of final certificate to Samuel Murphy is dismissed for the reason that it had not been served upon Murphy. The entry of Murphy remains intact.

Yours respectfully,

B. M. DILLEY, *Register.*
H.

Copy.

J. F. D. H. W. S.
33–1890.

WASHINGTON, D. C., *December* 18, 1897.

WILLIAM T. McMICHAEL
vs.
SAMUEL MURPHY.

H. E. No. 223 made Nov. 29, 1890, for S. W. ¼ Sec. 27, T. 12 N. R. 3 W. F. C. No. 2764, June 16, 1897.

Register and Receiver, Oklahoma, Okla.

GENTLEMEN: I am in receipt of your letter of December 7, 1897, forwarding proof of notice and reporting no appeal or other action taken from the decision of this office of August 10, 1897, sustaining your action dismissing the protest of William T. Mc-
"U." Michael involving H. E. No. 223 made November 20, 1890, by Samuel Murphy for S. W. ¼ Sec. 27, T. 12 N., R. 3 W. F. C. No. 2764, June 16, 1897.

In view of your report the case is hereby closed leaving Murphy's entry intact.

239 The entry will be examined in regular order with a view to passing the same patent.

Respectfully, BINGER HERMANN,
Commissioner.

Indorsed.

7615 "H" of Dec. 18, 1897.
Wm. T. McMichael *vs.* Samuel Murphy.
S. W. ¼ 27–12–3 W.
Closes case entry of Murphy remaining intact.

"H." Hm.J.
J. W. W.
Doc. 5, Case 6895. WASHINGTON, D. C., *Oct.* 17, 1901.

WILLIAM J. McMICHAEL
vs.
SAMUEL MURPHY.

A Contest.

Register and Receiver, Oklahoma, Okla.

SIRS: At the request of Attorneys for the parties, I transmit herewith the record in the case of William J. McMichael *vs.* Samuel Murphy involving the S. W. ¼ Sec. 27, T. 12, N. R. 3 W.

You will retain the papers in your custody and produce them in court only upon proper subpœna. When the papers have served their purpose, you will promptly return them to this office.

Following is a schedule of the papers transmitted:

F. C. No. 2764 and H. E. No. 223 by Samuel Murphy, with final proof, waiver of Heirs of Holt, two affidavits of protest filed March 8, and May 10, 1897 by Wm. T. McMichael and decision of R. & R.

240 Encl. No. 1 of 33–1890, S. D. S. of Levi Holt, filed by C. W. Ransom, Sep. 2, 1889 and copy of discharges.

Encl. No. 1, of 125499–1892, Argument by Dudley & Michner	1	paper.
Copy of decision "H" dated Jan. 18, 1893	1	paper.
28377–1893 Reg. Mar. 11, 1893, trans appeal	2	paper.
48651–1893, Reg. May 4, 1893, trans brief	2	" "
53952–1893, Reg. May 17, 1893, trans evidence of notice to Johnson M. Fuller and C. R. Renfro	3	" "
F. & F. M. Beall, Dec. 27, 1893, files (in Dept.) brief	2	" "
43140–1894, Reg. April 17, 1894, trans appeal of Levi Holt, filed June 23, 1892	2	" "
22764–1895, Hon. Secretary Feb. 25, 1895 decision	2	" "
36156–1895, Reg. Apr. 2, 1895, trans motion for review	3	" "
38802–1895, Dudley & Michener and Fred Beall, Apr. 12, 1895, file suppl. Motion for review	1	" "
Letter "H" April, 12, 1895, to Hon. Secretary	1	" "
40166–1895, R. & R. April 11, 1895 trans. answer of Levi Holt to showing of Samuel Murphy	2	" "
54676–1895, Reg. May 21, 1895, trans. motion for review.	2	" "
63565–1895, Hon. Secretary June 12, 1895 decision on review	2	" "
Copy of letter "H" July 5, 1895 to R. & R.	1	" "

Respectfully,

BINGER HERMANN,
Commissioner.

M. C. S.
W.

"H." H. H. W.
Doc. 5, Case 6895.

WASHINGTON, D. C., *October* 24, 1901.

WILLIAM J. MCMICHAEL
vs.
SAMUEL MURPHY.

241 Register and Receiver, Oklahoma, Okla.

GENTLEMEN: The record in the above entitled case was returned to your office with office letter "H" dated October 17, 1901, that it might be produced in court.

As the papers are needed in this office you will at once return them if they have served their purpose or are nor required within eighteen days for use in Court.

Respectfully,

BINGER HERMAN,
Commissioner.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
OKLAHOMA CITY, O. T., *Feb.* 15, 1902.

Debtor to Margaret Rider for Stenographic work, $3.75.

Certificate.

I, Seymour S. Price, Register of the United States Land Office at Oklahoma City, O. T. hereby certify that the within copies are copies of letters purported to have been written by former Register Hon. B. M. Dilley and the present Receiver, Hon. A. H. Classen and Departmental letters as shown by the records of this office in reference to the case of Samuel Murphy *vs.* the heirs of Levi Holt, involving the S. W. ¼ sec. 27, Twp. 12 R. 3 W. I. M. as the same appears in the regular series of letter press copy book and Departmental
242 letters among the files of this office between April 29, 1897 to the present date and numbered consecutively from One to Fourteen dated this 14th day of February 1902.

SEYMOUR S. BRICE, *Register.*

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

In the District Court Within and for Said County and Territory.

No. 3021.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY, A. H. CLASSEN ET AL., Defendants.

Depositions.

Depositions of witnesses taken to be used in an action pending in the District Court within and for the County of Oklahoma and the Territory of Oklahoma, wherein Amelia M. Holt is plaintiff and Samuel Murphy and A. H. Classen *et al.* are defendants, in pursuance of the notice hereto attached and the time and place therein stated.

That said Amelia M. Holt, plaintiff, appeared by her attorney J. S. Jenkins, and the said defendants, Samuel Murphy, A. H. Classen, W. L. Overholser, Oscar G. Lee, Leonidas L. Land and Myrta S. Mitcher appeared by their attorney J. H. Everest, and thereupon the said Amelia M. Holt, plaintiff, produced the following witnesses in order to-wit:

W. L. OVERHOLSER, OSCAR G. LEE, LEONIDAS L. LAND and SAMUEL MURPHY all of whom were of lawful age and being first duly sworn testified as follows:—

Q. State your name, age and residence?
A. W. L. Overholser, 28 years, Oklahoma City.

Q. Do you know Samuel Murphy?
A. Yes sir.
Q. Do you know the land in controversy in this suit?
A. Yes, sir.
Q. What was your employment about the 23rd day of June 1899?
243 A. Assistant Post Master of Oklahoma City.
Q. Who was Postmaster at that time?
—. Samuel Murphy, the defendant.
Q. Did you know A. H. Classen at that time?
A. Yes sir.
Q. What official position did he hold?
A. I think he was receiver of the Land Office.
Q. Did you know Myrta S. Mitcher at that time?
A. Yes, sir I knew her.
Q. What was her husband's name?
A. O. A. Mitcher.
Q. What official position did he hold at that time?
A. I don't know exactly what he was doing at that time.
Q. Do you know what official position O. A. Mitcher holds at this time?
A. No, sir I don't.
Q. Don't you know that he is Indian agent in the Osage Nation at this time, and has been for two or three years?
A. I know he is over there but I don't know what he is doing.
Q. Do you know Byron D. Shear?
A. Yes sir.
Q. Do you know what relation he is to Myrta Mitcher?

Objected to as incompetent, irrelevant and immaterial.

A. No, sir I don't.
Q. Do you know as a matter of fact that Byron D. Shear is a brother of Mrs. Mitcher?
A. I thought he was a brother-in-law to O. A. Mitcher, I knew he was some relation.
Q. Do you know who has been acting as agent for Myrta A. Mitcher in reference to this land?
A. No sir, I do not.
Q. Did you ever purchase any portion of this land in controversy from Samuel Murphy?
A. Yes, sir.
244 Q. When did you purchase this land?
A. I don't remember the date or time, it was the 23rd day of June, 1899.
Q. How much did you buy?
A. Five acres.
Q. Was that portion of the land which you bought from Mr. Murphy in litigation at that time?
A. Yes sir.
Q. Who was in possession of it at the time you purchased it?
A. W. T. McMichael.

Q. How long did W. T. McMichael remain in possession of the land you bought after you bought it?
A. I guess it remain till he died, about three years.
Q. What did you do to get possession after McMichael died?
A. Not a thing.
Q. Are you in possession now?
A. No sir.
Q. Have you ever been in possession of that land?
A. No sir.
Q. Have you ever paid anything for that land?
A. I gave a note.
Q. Has that deed ever been delivered to you?
A. Yes, sir.
Q. Is there any understanding between you and Mr. Murphy outside of the statements in the deed?
A. No sir, in the deed and the note to.
Q. Well where is the note now?
A. Newton Avey has it. Here witness leaves stand at request of both parties and produces said note.
Q. Will you please read the note to the stenographer?
A. Yes.

As follows: Oklahoma City, O. T., June 23, 1899. Two years after date we or either of jointly and severally waiving grace
245 and protest promise to pay to Louisa Murphy at Bank of Commerce, Oklahoma, O. T., Five Hundred Dollars value received with ten per cent. interest per annum from date until paid, payable at maturity of note and in case this note is placed in the hands of an attorney for collection I agree to pay Fifty dollars additional for the collection of the same. The indorsers, grantors and assignors severally waive presentment for payment protest and notice of protest for non-payment of this note and all defences in the ground of any extension of time of its payment that may be given by the holder or holders to them or either of them or the makers thereof.

W. L. OVERHOLSER.
L. OVERHOLSER.

P. O. Oklahoma, O. T.
Indorsed Louisa Murphy.

Q. Was there any other verbal agreement between you and Mr. Murphy?
A. Yes, sir.
Q. What was that agreement?

Objected to as incompetent as transaction effecting real estate and all agreements relating thereto must be in writing.

A. When I got possession I was to pay it, if I didn't pay it I was to draw ten per cent. interest.
Q. Was that all the agreement with Mr. Murphy?
A. Yes, sir, that was all we had.

Q. Did you consult any attorney with reference to the purchase of that land?

A. No, sir.

Q. Did you ask any attorney about the title?

A. I don't think I did, but I think my father looked it up and talked to some of them.

Q. Your father is L. Overholser?

A. Yes, sir.

Q. Who was he acting for when he was looking it up?

A. I guess he was acting for me.

Q. What attorneys did he consult?

A. I believe he was talking to Mr. Everest and A. B. Hammer, I am not sure.

246 Q. Who drew the note and mortgage in this transaction?

A. I am not sure but I believe Mr. Everest drew the note.

Q. What Mr. Everest?

A. J. H. Everest. I think Newton drew up the other papers.

Cross-examination:

Q. You say Mr. Newton Avey let you have that note to bring over here?

A. Yes, sir.

Q. I understand you to say that Mr. McMichael was in possession of the land at the time you bought it?

A. Yes, sir, he had stock on it and had it plowed up, he an- Murphy both lived on it.

Q. McMichael also had a suit pending in court to obtain title to this Holt quarter section, didn't he?

A. Yes, sir.

Q. And Murphy also had a suit against McMichael to recover this 40 acre tract of which your five acres was a part?

A. Yes sir.

Q. Your agreement with Murphy then was simply to the effect that whenever the McMichael's interest in the tract ceased so that Murphy had a clear title as far as the McMichael interest was concerned that this note was to be due and payable?

A. Yes, sir.

Q. Had you any motive or knowledge or any information at the time of the purchase that Amelia Holt or any of the heirs of Levi Holt, deceased, had or claimed to have any interest in this tract of land?

A. No, sir, McMichael was the only one that I ever heard anything about at the time I bought it.

Q. And the only contract or agreements in writing between you and Murphy concerning this tract of land are the note, a copy of which has been introduced in evidence, and the deed given for this tract of land of record now?

A. Yes, sir.

Q. Do you know whether the time has expired for W. T.

247 McMichael's heirs to appeal to the Supreme Court in the territory of Oklahoma in the case of McMichael *vs.* Murphy *et al.* to the Supreme Court of the U. S.?

A. No, sir.

Redirect examination:

Q. Did you make any investigation at all with reference to the title of the land when you bought it?
A. No, sir I didn't.
Q. On whose recommendation did you buy this land?
A. I guess it was Mr. Murphys because he is the only one I talked to about it.

W. L. OVERHOLSER.

Subscribed and sworn to before me this 23rd day of June, 1903.

——— ———.

OSCAR G. LEE being duly sworn to tell the truth the whole truth and nothing but the truth testifies as follows:—

Q. State your name, age and residence?
A. Oscar G. Lee, 39 years, Oklahoma City.
Q. Do you know the land in controversy in this suit?
A. I do.
Q. Did you and Leonidas L. Land acting together ever purchase any portion of this land in controversy?
A. Yes, sir.
Q. When was that contract made for the purchase of the land?
A. In June, 1900.
Q. Was that contract in writing?
A. I think so.
Q. Have you the original in your possession now?
A. I have not.
Q. Where is it?
A. I don't know.
Q. Do you know whether that contract was ever acknowledged or recorded?
A. I think it was recorded.
Q. Who was in possession of the particular tract of land bought by you and Mr. Land at the time you bought it?
248 A. Mr. Murphy was in possession of part of it.
Q. And who had possession of the other part?
A. His name was McMichael I think. W. T. McMichael.
Q. How much of that land was occupied by Samuel Murphy at the time you bought it?
A. I couldn't tell.
Q. Give us an estimate?
A. I couldn't give an accurate estimate, but it may have been half.
Q. How much money did you pay Mr. Murphy on the execution of the contract?
A. One hundred dollars.
Q. Did you pay that in money or by check?
A. Check I think.
Q. Do you have that check in your possession now?
A. I couldn't say.

Q. I notice from the record that on the 20th day of June, 1900, that Samuel Murphy and wife executed to you and Leonidas L. Land a deed to the 15 acres described in the contract, I'll ask you whether or not there was a private agreement in writing between Mr. Murphy and you and Mr. Land with reference to the manner in which you should pay him for this 15 acres of land?

A. There was not.

Q. How much money did you pay Mr. Murphy on the occasion of the execution of the first deed?

A. A thousand dollars.

Q. Was that paid in money?

A. In money or check, I think it was a check.

Q. Have you that check in your possession now?

A. Not to my knowledge.

Q. At the time you purchased this land did you know that suit was pending against Mr. Murphy for the title to that land, wherein W. T. McMichael was plaintiff and Samuel Murphy *et al.* was defendant?

A. Yes, sir.

Q. Did you consult an attorney with reference to that title
249 when you bought it?

A. Before I bought it I did not.

Q. Do you know whether Leonidas Land had the title examined before he bought it?

A. I do not.

Q. If I understand you, you and Mr. Land as far as you are concerned bought this land without asking any questions about the title?

A. We knew the McMichaels were on part of it and had a suit against all of it.

Q. Did you make any effort to learn whether there were any other claims against the land?

A. I couldn't say whether I did or not.

Q. Have you an agreement with Samuel Murphy by which you were to deed him back about ten lots of this land which you purchased from him, including the house where Samuel Murphy once lived?

A. We sold Mr. Murphy about ten lots or ground equal to ten lots including the house for $2,200 less the some back rent that he owed us at that time.

Q. Is that contract in writing?

A. It is a deed.

OSCAR G. LEE.

Subscribed and sworn to before me this 23rd day of June, 1903.

B. P. HOUGHTON,
Notary Public.

There being no other witnesses present by the consent of both parties the further taking of depositions in this case was adjourned until Wednesday June 24, at 2 o'clock P. M.

Wednesday, June 24, 1903, the plaintiff appeared by her attorney J. S. Jenkins, and the defendants by their attorney J. H. Everest, and *at* the hour of 2 o'clock P. M. having arrived the taking of depositions was resumed and the witness LEONIDAS L. LAND having appeared was duly sworn to tell the truth the whole truth and nothing but the truth testifies as follows:—

250 Q. State your name, age and residence?
A. Leonidas L. Land, 44 years, Oklahoma City.
Q. Are you one of the defendants in this case?
A. Yes, sir.
Q. Do you know the land in controversy in this suit?
A. Yes, sir.
Q. Did you and Oscar G. Lee ever purchase any of the land covered by this present law suit?
A. We purchased 15 acres.
Q. At what time did you contract for this 15 acres?
A. The 13th day of June, 1900.
Q. Did you know A. H. Classen at that time?
A. Yes, sir.
Q. What official position did he hold at that time?
A. I think he was receiver at the Land Office.
Q. Did you know Seymore Price at that time?
A. Yes, sir.
Q. What official position did he hold?
A. He was Register of the Land Office.
Q. Did you know W. L. Overholser at that time?
A. Yes, sir.
Q. What official position did he hold?
A. I think he worked in the Post Office.
Q. Did you know Frank Bebee at that time?
A. I knew him when I seen him that is all.
Q. Do you know what official position he had at that time?
A. I think he was Post Office inspector.

Counsel for defendant moves to strike out the question and answer as wholly irrelevant.

Q. Did you know O. A. Mitcher at that time?
A. Yes, sir.
Q. What official position did he hold at that time?
A. Well, I couldn't say.
251 Q. What official position does he hold now?

Objected to as irrelevant.

A. I supposed he is agent of the Osage Indians.
Q. Do you know Myrta Mitcher, his wife?
A. No, sir.
Q. Did you hold any official position at that time?
A. No, sir.
Q. What official position, if any did Samuel Murphy hold at that time?
A. He was Postmaster at that time.

Q. Now, the contract that you made on the 13th day of June, 1900, is in writing and recorded is it not?

A. Yes, sir.

Q. At the time you made that contract who was in possession of the 15 acres of land you and Mr. Lee purchased?

A. W. T. McMichael was in possession of part of it and Mr. Samuel Murphy was in possession of part of it.

Q. How much was Mr. Murphy in possession of at that time?

A. I don't know just how much he was in possession of at that time, I don't know how much ground there was, but he had his home there on it.

Q. You and Mr. Lee deeded back to Mr. Murphy a portion of the land which he had in possession, did you not?

A. Yes, sir I have possession of it now.

Q. When did you get possession of that 15 acres?

A. Something like three months ago we got possession.

Q. At the time you bought this land did you know that there was a suit pending between W. T. McMichael and Murphy and Classen for that land?

A. Yes, sir for the whole quarter.

Q. Who told you about that suit?

A. I saw from the abstract of the suit?

Q. Who examined that abstract for you?

A. I examined it myself and I don't know as I could say who else, Owens and Welsh made the abstract.

252 Q. Before purchasing that 15 acres did you consult with J. H. Everest with reference to the title?

A. I couldn't say whether I did or not.

Q. Did you purchase that 15 acres of land without making any inquiries as to the title?

A. I purchased that 15 acres of land, I was going according to the deed Murphy had, and I don't think I consulted Mr. Everest.

Q. How much money did you and Mr. Lee pay for that land?

A. We paid Mr. Murphy $1100. in money for the land at the time we purchased and gave him a vendors lien for $2200.

Q. Have you since paid that vendors lien?

A. Yes, sir.

Q. When did you pay that vendors lien?

A. I couldn't say the date, but since that Mr. Murphy wanted to buy the house back and about 10 lots with it, he spoke to me several times about buying it and I never gave him any satisfaction and he finally got after Mr. Lee and Mr. Lee and he made a trade so we deeded him back the house and about 10 lots in full payment of the vendors lien.

Q. At what date did you convey these 10 lots to Samuel Murphy?

A. Well, it was sometime along about 1902, the deed will show the date.

Q. Is there any private agreements between you and Mr. Murphy and Mr. Lee either verbal or written except the agreement set out in the contract and the two deeds which we have referred to?

A. None whatever.

Cross-examination:

Q. In reference to this $1100 you paid Mr. Murphy, when and how did you pay it?

A. We paid $100 when the contract was made and paid $1,000 more when the deed and abstract was turned over.

Q. Are you able to state whether this deed of the house and 10 lots spoken of was made to Samuel Murphy or to Louisa Murphy or both?

A. My recollection is that it was made to Louisa Murphy.

Q. Mr. Land had you any notice, knowledge or information at the time you and Mr. Murphy purchased this land of Samuel and Louisa Murphy, that the plaintiff in this action, Amelia M. Holt or any of the heirs of the deceased, Levi Holt, had or claimed to have any interest in this quarter section or any part of it?

253

A. No, sir, I knew nothing against it only the W. T. McMichael case.

Redirect examination:

Q. At what date was that deed and abstract turned over to you?

A. A few days after the contract was signed.

Q. Did you ask any questions or make any investigations at the time you bought this land to ascertain what had become of the right of the heirs of Levi Holt?

A. I didn't know anything about Levi Holt or his heirs.

Q. You knew that W. T. McMichael had a suit pending against Murphy and others at that time, did you ever read the petition of McMichael against Murphy or have anyone read it for you to ascertain whether or not any one else had an interest in that land except the claims of McMichael and Murphy?

Objected to as immaterial unless the question is made to refer to a date prior to the date of the purchase by witness.

A. I never did read it, my understanding of it at that time was that it was a suit to eject McMichael to the land, I didn't read the petition at all.

Recross-examination:

Q. State whether or not you required an abstract of the land and examined that abstract before you consummated the land and paid out the $1,000?

A. Yes, sir.

LEONIDAS L. LAND.

There being no other witnesses present, by the consent of both parties the further taking of depositions in this case was adjourned until Thursday, June 25, 1900, at 9 o'clock A. M.

The hour of 9 o'clock having arrived the plaintiff appeared by her attorney J. S. Jenkins and the defendants by their at-
254 torney J. H. Everest and the witness SAMUEL MURPHY appeared and was duly sworn to tell the truth the whole truth and nothing but the truth testifies as follows:—

Q. State your name, age and residence?
A. Samuel Murphy, 28 years, Oklahoma City.
Q. Do you know O. A. Mitcher?
A. I do.
Q. Do you know the land in controversy in this suit?
A. I do.
Q. Did you ever sell any portion of the land in controversy to O. A. Mitcher?
A. Through him I sold a portion of it to his wife.
Q. Did you have any talk with his wife about the sale at all?
A. I don't think I ever saw his wife at all, in relation to that transaction.
Q. What official position did O. A. Mitcher hold at that time?
A. I don't remember if he held any at that time.
Q. I'll ask you if he wasn't at that time a member of the Republican National Committee of Oklahoma?
A. I don't say whether he was or whether he wasn't, I know he was at one time, but I don't remember whether he was at that time or not.
Q. In what way did Mr. Mitcher pay you for that land?
A. My recollection is that he paid me $1,000 in cash for five acres.
Q. Do you remember whether that was paid in cash or check?
A. I don't remember now whether he gave me the money or check.
Q. Was Mr. Everest present when that trade was closed?
A. I don't remember that he was.
Q. Who was in possession of that land at the time you made the sale to Mr. Mitcher, I mean the five acres?
A. Mr. Charley J. Blanchard, who was put off by an action in court.
Q. When you put Blanchard off by an action of court who went in immediate possession, if anybody?
A. McMichael was on the spot and took immediate possession.
Q. How long after that did McMichael hold immediate
255 possession of that five acres?
A. The record of the court will tell you, I don't remember.
Q. Did McMichael hold possession of that five acres until the time he was killed?
A. He did, he was actually in possession of that five acres but there was a judgment of ouster against him when he was killed.
Q. I'll ask you if it isn't a fact that Mr. Mitcher never got possession of that land till about three months ago when the McMichael heirs were put off by the Sheriff under a writ from the District Court.
A. Yes, it is a fact.

Q. Did you explain to Mr. Mitcher at the time you sold him this land that the place was in litigation?

A. I certainly did, Mr. Mitcher understood the nature of the suit that McMichael had.

Q. When Mitcher bought the land he bought it with the understanding that he took it subject to that litigation?

A. He did.

Q. You sold a portion of that land to F. M. Riley didn't you?

A. Yes.

Q. I will ask you whether or not at the time you sold to Mr. Riley, whether he understood that the place was in litigation at the time you made the conveyance to him?

Objected to as incompetent, irrelevant and immaterial.

A. Mr. Riley understood the McMichael litigation, which was the only litigation then known, but the records will show.

Q. Have you and Mr. Riley any agreement either in writing or verbal with reference to that conveyance otherwise than the deed from you to Riley?

A. I don't remember of any.

Q. What did he give you for that piece of land?

A. He gave me a house and eight lots on Ninth St. valued at about $10,000, that included the furniture.

Q. Is there any defeasance in the deed of Mr. Riley to you
256 in which the house and lots were to return to Mr. Riley in case your title failed to the land you conveyed to Mr. Riley.

A. My recollection is that I guaranteed the title in the deed to all litigation of McMichael.

Q. Did you ever have any understanding with Oscar Lee and Leonidas L. Land that if the title to them failed you would return them the $1100 which they had paid you?

A. Did not.

Q. Who was in possession of the land which you sold to Mr. Riley at the time you sold it to him?

A. McMichael.

Q. When did Mr. Riley get possession of the land you conveyed to him?

A. When I succeeded by process of the court to putting him off, about three months ago, the records will show.

SAMUEL MURPHY.

Subscribed and sworn to before me this the 25th day of June, 1900.

B. P. HOUGHTON, *N. P.*

I, B. P. Houghton, a Notary Public within and for the County of Oklahoma, in the Territory of Oklahoma do hereby certify that the above named W. L. Overholser, Oscar G. Lee, Leonidas L. Land and Samuel Murphy, the witnesses whose names are severally subscribed to the foregoing depositions, were by me first duly sworn to testify the truth the whole truth and nothing but the truth in the case afore-

said, and that the depositions by them respect*fully* subscribed were reduced to writing and subscribed by the respective witnesses in my presence and the same were taken commencing on Tuesday, the 23rd day of June, 1903, between the hours of 8 o'clock A. M. and 6 o'clock P. M. of said day at the office of J. S. Jenkins in the city of Oklahoma City, in the County of Oklahoma, as specified in the notice hereto attached, and the taking of said depositions were continued from day to day as shown in said depositions, and finally closed on the 25th day of June, 1903, and that I am not
257 attorney for either of said parties or related to either of said parties or in any wise interested in the event of said action.

B. P. HOUGHTON, *N. P.*

Page One A.

Deposition of witness taken to be used in an action pending in the District Court within and for the County of Oklahoma, Territory of Oklahoma wherein Amelia M. Holt is plaintiff and Samuel Murphy and A. H. Classen are defendants in pursuance of the notice hereto attached and at the time and place therein stated the plaintiff appeared by her attorney, J. S. Jenkins and the defendants appeared by their attorney J. H. Everest.

And thereupon the said plaintiff produced C. W. RANSOM as a witness and C. W. RANSOM of lawful age being first duly sworn deposeth and sayeth:

Both plaintiff and defendants appeared by their attorneys, the plaintiff by his attorney, J. S. Jenkins, and the defendants by their attorney, J. H. Everest, and the plaintiff produced C. W. RANSOM as a witness who was duly sworn to testify to the truth, the whole truth, and nothing but the truth, and testified as follows:

Q. State your name, age and residence?
A. C. W. Ransom, forty-one, Perry.
Q. Do you know Amelia M. Holt, the plaintiff in this cause?
A. Yes sir.
Q. Do you know Samuel Murphy?
A. Yes sir.
Q. Do you know A. H. Classen, one of the defendants in this cause?
A. Yes sir.
258 Q. What is your profession?
A. I am an attorney.
Q. How long have you been a practicing attorney?
A. Since '87 or '88 I wont say just which.
Q. Do you practice in the Land Department of the United States?
A. Yes sir.
Q. Do you know the S. W. Quarter of Section 27 Tp. 12 North of Range 3 W. known as the Murphy-McMichael claim located just North and a little East of Oklahoma City?
A. Yes sir.

Q. Do you know any contest that was filed in the Land Department between Samuel Murphy and W. T. McMichael and the heirs of Levi Holt over that tract of land?

A. I know of the case you refer to.

Q. Did you represent any of those parties in that contest?

A. I represented Levi Holt, deceased until he died and his heirs afterward, it was not a contest.

Q. Was this controversy I will call it, finally determined by the Secretary of the Interior?

A. It was decided by the Secretary of the Interior and what I call finally decided.

Q. Do you know in whose favor that controversy was decided by the Secretary of the Interior.

A. The decision I refer to was in favor of Holt and against Murphy and McMichael to this extent that it held that Holt was prior to Murphy and McMichael if entry was perfected within the time allowed therefor.

Q. I notice from the records of the Land Office in that case, that on the 14th day of June, 1897, you filed in the local land office at Oklahoma City, a document reading as follows: U. S. Land Office, Oklahoma, O. T. June 14, 1897. In the matter of the preference right of the heirs of Levi Holt, deceased, to enter the S. W. quarter of sec. 27, Town. 12, N. of R. 3 W. I. M.

Waiver of right of entry.

259 Come now the heirs of Levi Holt, deceased by their attorney of record, C. W. Ransom and hereby waive the right to perfect rights of the heirs to make homestead entry of the S. W. quarter Sec. 27, Town. 12, N. of R. 3 W. I. M. said right to make entry being accorded said heirs by the Hon. Secretary of the Interior Department in the case of the heirs of Levi Holt against Samuel Murphy and ask in behalf of said heirs to withdraw all claim to said land, this instrument being in consideration of the receipt of $2000. to them in hand paid by the said Samuel Murphy. Signed C. W. Ransom. Subscribed and acknowledged before me this 14th day of June, 1897, B. M. Dilly, register. Did you file that instrument?

A. Let me see the instrument you have read from? I will say that that is not my signature there and as to the filing of that paper I don't remember the form and words of it but I do remember that a paper of that substance in so far as to waiver of the right of entry, was signed and executed by me at or about that date.

Q. Where did you file that paper that you speak of?

A. I don't think that I filed that paper, that is the best of my recollection.

Q. Do you remember to whom you delivered that paper after you executed it?

A. The last, to my recollection, that I knew or saw of that paper was in Mr. Everest's hands.

Q. What Everest?

A. J. H. Everest.

Q. This paper which I have read to you that purports to be a copy of the paper which was delivered by you to Mr. Everest as you have

stated acknowledged the receipt of two thousand dollars to them in hand paid by the said Samuel Murphy, did Samuel Murphy pay you two thousand dollars or any part as a consideration of that instrument you have named?

A. I never have received any money from Samuel Murphy in my life so far as I know or can remember nor did I receive two thousand dollars from any one at that time.

260 Q. Did you ever receive from anyone two thousand dollars ($2000.) or any amount in consideration of the execution of this instrument that I have called a waiver that I have read to you?

A. I never did.

Q. Was there any consideration paid to you or any one else that you know of in consideration of your executing and delivering this said waiver of the right of entry to the heirs of Levi Holt?

A. No money was paid by Murphy to me or by Everest to me. As to what you may mean by consideration you will have to define that legal term, I cannot answer it without.

Q. In the execution of a deed or waiver of entry for consideration, do you understand the meaning of the word consideration as used in that sense?

A. If you wish me to define the word consideration I refuse to answer the question as I am not very well versed in legal definitions according to the books at this time and don't care to show my ignorance.

Q. How long have you been practicing law?

A. Been practicing land law something like fourteen years now.

Q. Do you understand the meaning of the word as used in law with reference to contract?

A. I have a certain understanding of that term, but I don't mean to say that it is at all correct.

Q. Did Mr. Classen or Mr. Murphy or any other person give you two thousand dollars ($2000.) or any amount of money in order to induce you to execute this waiver of right of entry of the Holt heirs as has been stated?

A. No sir.

Q. Do you remember anything about Samuel Murphy and his wife executing a mortgage to J. H. Wheeler for two thousand dollars on this land above described, on or about the fourteenth day of June, 1897?

A. No sir I have no personal knowledge nothing more than seeing the record of the instrument and the instrument afterwards.

Q. Did you have anything to do with the contract or agreement by which Samuel Murphy and wife executed to J. H. Wheeler a
261 mortgage on the land above described for two thousand dollars ($2000.)?

A. I had nothing to do with Samuel Murphy and his wife about executing that mortgage, never any word passed between he and I, had nothing to say to J. H. Wheeler concerning that matter so far as I now remember, to the present date.

Q. To refresh your mind I will ask you if you were present with J. H. Everest and that you and Mr. Everest went to J. H. Wheeler on

or about the date I have named and asked him to act as trustee, that you and Mr. Everest were making a settlement of some matter and desired to have a mortgage made in his name to the amount of two thousand dollars ($2000.) and that it was to remain in Mr. Wheeler's name unless you and Mr. Everest should jointly go to Mr. Wheeler and instruct him to assign the mortgage to whomsoever you and Mr. Everest should jointly ask him to transfer it.

A. No sir, I did not go to J. H. Wheeler and make such a request of him I might possibly be mistaken but my recollection of the matter is that I did not speak to Mr. Wheeler at that time concerning the matter?

Q. Do you know Ferdinand Batchelder?

A. I do.

Q. When did you first get acquainted with Mr. Batchelder?

A. Nine years ago, approximately.

Q. Where does he reside now?

A. Some place in New England, his office is in Boston.

Q. What is his profession?

A. He is a capitalist or something like that.

Q. Is he related to Capt. Batchelder that used to live at Ponca City, that you know of?

A. His son.

Q. Do you know Capt. Batchelder?

A. I do.

Q. What is his Post Office now?

A. Boston.

Q. Do you know anything about the deed that was executed to Ferdinand Batchelder to the W. half and the N. E. Quarter
262 of this quarter section above described?

A. I know of it I have seen the deed I think and have seen the record.

Q. Were you present when that deed was executed from Samuel Murphy to Ferdinand Batchelder?

A. No sir.

Q. Did you have any talk with J. H. Everest or Mr. Murphy before the execution of this deed with reference to this deed?

A. I had no talk with Mr. Murphy about it, I had some talk with Mr. Everest.

Q. What talk did you have with Mr. Everest about that matter?

A. I can't specifically give it at the present time.

Q. Could you give substantially the contract or agreement upon which the deed was executed?

A. I don't know as I could to be accurate about it.

Q. Could you give it as to the best of your memory?

A. Mr. Everest, I believe, said that he was the attorney and that he would have Murphy draw up a deed and I think it was to be deposited.

Q. On what land was Mr. Murphy to make this deed?

A. I think it was on the land in dispute.

Q. The West half of the N. E. Quarter of the quarter section that was in controversy?

A. Undoubtedly it was, is my recollection.

Q. Was Mr. Batchelder present at the time you and Mr. Everest had the conversation in regard to that?

A. I don't remember that he was, I think not.

Q. Do you remember you suggested that the claim and title to that one hundred and twenty acres of land should be put in the name of Ferdinand Batchelder?

A. I would not be sure, what I suggested.

Q. What is the best of your recollection?

A. I can't say that I have any recollection, as to my suggestions then.

Q. Don't you know you suggested to Mr. Everest as a matter of compromise between Samuel Murphy and the heirs of Levy
263 Holt that Mr. Murphy execute a warranty deed to Ferdinand Batchelder for the West half of the N. E. quarter of the above described land to be held in trust by Mr. Batchelder for the benefit of the heirs of Levi Holt?

Objected to as leading and suggestive.

A. I didn't make that suggestion.

Q. Do you know if that suggestion was made by any one else in your presence?

A. It was not.

Q. Now to refresh your memory, Mr. Ransom I will ask if you represented the heirs of Levi Holt and Everest represented Samuel Murphy and did you not on or about the 14th day of June, 1897 or at some time shortly after that agree to a settlement of the contest between Samuel Murphy and the heirs of Levy Holt that Samuel Murphy should deed to the heirs of Levy Holt the West half and the N. E. quarter of said quarter section of land and that Samuel Murphy should retain S. E. quarter of said quarter section and that that should be a final settlement of the litigation between Samuel Murphy and the heirs of Levi Holt?

A. No sir, as I understand your question.

Q. There was no such agreement or understanding between you and Mr. Everest as I have above stated?

A. We didn't have that understanding.

Q. What was the understanding between you and Mr. Everest with reference to that settlement if there ever was an understanding between you and Mr. Everest?

A. Mr. Everest wanted to perfect Mr. Murphy's final proof that had been in the office there for a long time, and came to me and said the only thing in the way was the Holt application and Mrs. Holt had refused to come out here and perfect that application and told me to do what I was amind to and under that authority I made the waiver substantially in the form above recited.

Q. What were you to receive from Mr. Everest or some one else for the relinquishing or delivery of the waiver which you have spoken of?

A. There was no money coming my way.

264 Q. Was anything else done or any deed or mortgage made by which you were secured for the payment of any amount

of money for the relinquishing or delivering to Mr. Everest of this waiver of the rights of the Holt heirs as above stated?

A. You may term it a waiver of the Holt heirs which in form it was put it was only the chrystal-ization of Mrs. Holt refused to come and perfect her entry as the department had allowed her a time for her to perfect that entry and as the time was dwindling I thought the best thing to do, as the rules of the Land Department required that applications for homestead entry had to be made in person. An attorney can not perfect an entry for an applicant and as she refused to come and make the application to perfect the entry after I had won the land for her and had instructed me to that effect, I took that manner of saving myself for my fee in the case and make good the money that I had invested in that litigation which had then lasted something like seven or eight years. Neither she nor Col. Holt ever put a cent into the case. As I understand your question, no sir.

Q. Then you know nothing of the reason why Mr. Murphy executed the mortgage above stated, to J. H. Wheeler or why Samuel Murphy executed the deed to Ferdinand Batchelder above referred to?

A. In strictness as I understand the question I do not know what was in Mr. Murphy's mind when he executed that paper, I did not see or talk to him.

Q. Did you talk to Mr. Everest and learn why Mr. Murphy executed the deed and mortgage above referred —?

A. I had a talk with Mr. Everest, but not with Mr. Murphy.

Q. What did Mr. Everest tell you about that deed and mortgage above referred to?

A. Why I believe I stated that Mr. Everest and I talked about this and I have given the matter as fully as I can at this time.

Q. Please state it as I have no recollection of your giving the conversation between you and Mr. Everest with reference to that mortgage and deed?

265 A. Mr. Everest came to me and said that he would like to perfect Murphy's final proof as it had lain there in the office for a year or so and the only thing in the way was this application of Mr. Holt and he I think drew up and prepared an instrument in the form that you have read and I executed and delivered it and received no money or security running my way.

Q. Now Mr. Ransom what did all that have to do with the execution of that mortgage to J. H. Wheeler and that deed to Ferdinand Batchelder?

A. I was not present when either of those instruments were drawn and Mr. Everest must have drawn them and he can probably give the matter to you better than I.

Q. Was that deed and mortgage that I have just referred to the mortgage given to Wheeler and the deed to Batchelder, executed and delivered without your knowledge or consent?

A. I am sure that I never saw the mortgage or the deed until many months after.

Q. Did you know anything at that time about the execution and delivery?

A. Only by hear say.

Q. Who told you?

A. Mr. Everest I think told me.

Q. To refresh your mind Mr. Ransom I will ask you if Mr. Everest didn't say to you that he wanted the deed executed to Ferdinand Batchelder to the one hundred and twenty acres of land above mentioned and also a mortgage to J. H. Wheeler for two thousand dollars for the whole quarter section for the purpose of securing you in your fees for what you had done in representing the Holts in the contest above mentioned?

A. I don't think he used the language you place in his mouth there.

Q. Did he use any language substantially to that effect?

A. He certainly mentioned the deed and mortgage but didn't mention other matters you put in there.

Q. Did he say to you that they were executed to secure the amount of money that you and Mr. Everest had agreed to?

A. No sir?

266 Q. Did he say that substantially?

A. I don't think he did.

Q. Then after this mortgage and deed were executed by Samuel Murphy and made to secure you in the payment of the amount of money you claim for a settlement in the whole contest, you know nothing of that fact?

A. I don't think I understood that these were executed for that purpose.

Q. For what purpose did you understand that this Wheeler mortgage and Batchelder deed were executed?

A. Just exactly for the purpose expressed on the face of each only it never was contemplated that any money would be paid upon the mortgage; that was merely an earnest that the deed and title would be delivered as soon as patent issued.

Q. Did you understand that deed passed a title to Ferdinand Batchelder?

A. No sir I did not so understand it.

Q. Well what did you understand about the Batchelder deed?

A. I understood that when delivered, it would pass title.

Q. To whom was that deed to pass title?

A. To the grantee thereon named so far as I understood.

Q. And that was Ferdinand Batchelder was it?

A. That is the name that is named as grantee in the deed I refer to.

Q. Now Mr. Ransom you speak about executing this waiver for the purpose of obtaining your fee for the work you had done in the contest. How did the execution of that waiver of the Holt heirs assist you in obtaining your fees on that case?

A. Mr. Batchelder had an inchoate interest in a piece of real estate in Kay County and this deed drawn there passed to him, and

another party named by me received the deed to the piece of land in Kay County.

Q. Who was that other party?

A. My wife.

Q. What is the description of the land in Kay County referred to?

A. It is the West half of the North East Quarter of Section 29 Town. 26 North of Range 2 East of the I. M.

Q. Do you and your wife own that land now?

A. My wife owns it but it was some time later before she
267 got the deed to it.

Q. How far is that from the town of Perry where we are now?

A. About thirty-five miles.

Q. Who conveyed that land to your wife?

A. One T. J. Murphy.

Q. What did Ferdinand Batchelder have to do with the conveying of that land to your wife?

A. Well he put some money into it and his equities there made him one of the parties transferring it to my wife, in that way.

Q. How much money was that equity of Mr. Batchelder?

A. I don't know exactly how much he had put in, but if you want to know how much money he had invested by what I was expecting to get by the deed made by Batchelder it was eighty acres of land that was just a short distance from Ponca City right on Boisdare creek and is worth from $3000. to $4000.

Q. When was that land conveyed to your wife?

A. It must be close to four years, I can't remember the date it was made.

Q. Where was Ferdinand Batchelder when you and he made arrangements for conveying that land at Oklahoma City and that land at Ponca City?

A. My recollection is he was in Kay County when the deal was talked over, I don't remember all that occurred nothing more than any other circumstances arranging what he was to do, most of the arrangements if not all of them were made with Capt. Batchelder.

Q. Was anybody present at any of those conversations?

A. I don't think so I don't usually make matters of that kind public.

Q. Was that before or after Mr. Everest came to you for the purpose of completing this conveyance between the Holt heirs and Mr. Murphy?

A. Well it must have been after it was first suggested.

Q. Why didn't you continue those negotiations with Ferdinand Batchelder?

A. Because he left for Tennessee.

Q. How long did this negotiation last between you and Mr. Batchelder with reference to the eighty acres of land at Ponca City?

268 A. It would be difficult for me to say whether it was one month or longer it might have been either.

Q. What was the condition of the title of the eighty acres of land at Ponca City at the time you traded with Mr. Batchelder?

A. It was just about the same condition as Mr. Murphy's was in, proof had been made and was laying in the office waiting the disposal of some contest.

Q. Was Mr. Batchelder contesting that eighty?

A. No.

Q. Who had the filing on it?

A. T. J. McElroy.

Q. Was that the man that was to deed it to you?

A. Well he was the original party as I understand it, the man that delivered this deed was T. J. Murphy.

Q. What interest had T. J. Murphy in it at that time?

A. He was the man of responsibility.

Q. Where is T. J. Murphy now?

A. I never have seen him since he made the deed to my wife here in Perry, he went to California.

Q. Where is the man that got the patent?

A. He is working on the Choctaw and was headed for Tennessee when I last saw him.

Q. Where was he the last time you heard of him?

A. He was right here in Perry and bummed five dollars off of me.

Q. Do you know anything about T. J. Murphy?

A. Mrs. McElroy is living on the other eighty and she can doubtless tell you where her husband and brother are.

Q. T. J. Murphy was a brother to Mrs. McElroy?

A. Yes sir.

Q. Now that two thousand dollar ($2000.) mortgage that was executed to J. H. Wheeler by Samuel Murphy and wife, I see from the record was afterward transferred to Mr. Batchelder, do you know anything about that transaction?

269 A. If you ask me who signed the papers I will state to you that I don't know anything about it, I was not present but I have seen the mortgage and the record.

Q. Did you have any conversation with J. H. Everest or J. H. Wheeler about transferring that mortgage to Mr. Wheeler?

A. I have no recollection of that matter if I ever talked to Mr. Wheeler about that matter I do not remember it.

Q. Did you ever have any interest in that two thousand dollar mortgage held by Mr. Wheeler?

A. I was interested in seeing that Batchelder got his deed as I had agreed to and in that way I may have had an interest in it.

Q. Did you know why that mortgage was executed to Mr. Wheeler?

A. Why I don't know what was in Mr. Murphy's mind when he signed and executed that mortgage and I have explained to you all that has passed between Mr. Everest and myself concerning the matter.

Q. You have already stated all you know about the reasons why Mr. Murphy executed that mortgage to J. H. Wheeler?

A. All that I recollect at this time I believe I have stated.

Q. Do you know A. H. Classen?

A. Yes sir.

Q. Did you see him on or about the 14th day of June, 1897, at the time you executed and delivered this waiver?

A. I don't remember to have seen him as our business was transacted with Mr. Dilley, is my recollection of the affair.

Q. In what capacity was Mr. Classen employed at that time?

A. I don't just remember but I think he came into the office about the 14th of June, 1897, I am positive that he had nothing to do with this original transaction either personally or officially.

Q. Do you know anything about the execution of a deed from Ferdinand Batchelder of Ponca City, Oklahoma Territory to one Ewers White about the 12th day of May, 1899?

A. Why I believe that I have seen the deed or possibly at Capt. Batchelder's suggestion I drew it.

270 Q. Was Ferdinand Batchelder at Ponca City on or about that time?

A. My recollection is he was in Mass. in the County of Suffolk.

Q. Do you know any other facts with reference to the execution and delivery of this deed further than that shown upon the face of the deed?

A. Why I stated that I might have drawn the deed or I might not and it is possible that I might have seen the deed after it was drawn and before it was delivered.

Q. Do you know any other facts in relation to the deed as before stated?

A. You might refresh my mind.

Q. To refresh your mind I will ask you if you didn't know that this one hundred and twenty acres of land described in this deed had been conveyed to Ferdinand Batchelder, in law for the Holt heirs and that he was simply executing a quit claim deed to Ewers White as you suggested and without any consideration whatever?

A. If I understand your question, I don't remember all that you state, I do know that Murphy executed a deed to White which was recorded first that is I have seen the deed as recorded and it is my recollection that Capt. Batchelder and Capt. Stiles handled the other transactions between them.

Q. Were you present at Oklahoma City at the time A. H. Classen was said to have purchased this one hundred and twenty acres of land which was deeded to Ferdinand Batchelder as above stated from Ewers White?

A. I was present at Oklahoma City on many occasions and to answer your question categorically, so far as I know I was never there when A. H. Classen purchased this land from Ewers White.

Q. Do you know anything about A. H. Classen purchasing the West half and North East quarter of this quarter section that had been in contest between the Holt heirs and Samuel Murphy as above stated?

A. I have seen the record of the deed from Ewers White to A. H.

Classen and I know about it in that way and I believe at one time Mr. Classen mentioned something about it to me.

Q. Was that at the time of the purchase or some time after it?

A. I don't think it was at either time. Probably before the purchase.

271 Q. Is that all you know about A. H. Classen buying this one hundred and twenty acres of land as above stated?

A. I believe it is all I know of the transactions by which he received that deed.

Q. Do you know any other facts about the agreement or the trade by which he was to receive the deed to the one hundred and twenty acres of land as above stated?

A. Why I don't recall anything now.

Q. Did Mr. Classen or any one for him pay you any amount of money in consideration of this conveyance of the one hundred and twenty acres of land above described, to A. H. Classen on or about the 13th day of May, 1899?

A. No sir.

Q. Did Mr. Classen or any one for him pay to you $3000 as part of the consideration for the conveyance of this one hundred and twenty acres of land to A. H. Classen?

A. No sir.

Q. Did Mr. Classen or any one for him or J. H. Everest pay to you or any one in your presence $3000, or any other amount of money for Ferdinand Batchelder on the completion of this conveyance of one hundred and twenty acres of land to A. H. Classen?

A. Why I know neither Mr. Everest or Classen ever paid any money as far as I recollect at that time, I am quite sure that I never received any money from either of them for completing this deal, I have received money from Mr. Everest for other matters.

Q. Did you receive any money from Mr. Classen for Ferdinand Batchelder, being delivered to you as part of the purchase money for the one hundred and twenty acres of land conveyed to Mr. Classen?

A. I am sure I never received a cent of money from A. H. Classen in my life he never paid me as much as one dollar though I tried once to get him to pay me five dollars and he didn't do it.

Q. Now if I understand you Mr. Ransom, Mr. Batchelder gave you this eighty acres of land near Ponca City for this one

272 hundred and twenty acres of land in controversy which was deeded by Samuel Murphy and wife to Ferdinand Batchelder?

A. That was the understanding between Capt. Batchelder and myself which has since ripened into a title of that eighty acres but in addition I put in some legal services to clear up the contest involving that eighty acres of land.

Q. Did you make that trade with Capt. Batchelder before this land was conveyed to Ferdinand Batchelder by Samuel Murphy or was it after this land was conveyed to Ferdinand Batchelder by Samuel Murphy and wife?

Here the stenographer was asked to read the question to the witness.

A. I cannot say, I know it was talked of before and it ripened into title afterward.

Q. Was that contract for this eighty acres of land near Ponca City reduced to writing at the time you made the contract?

A. Why the relinquishment was transferred to me.

Q. Was that transfer in writing?

A. Merely delivered me the instrument that I wanted which he already held or it is possible that I held as his attorney.

Q. Were there any indorsements on that instrument?

A. There was not.

Q. What was that man McElroy's name that proved up on this land?

A. Thomas J. McElroy.

Q. Would the date of that final proof be the date of that transfer to you?

A. No not in the sense I mean.

Q. How might you ascertain the date of that transfer to you?

A. I can't do it myself: there was no instrument in writing, merely made the agreement with me.

Q. What instrument did he hold that was delivered to you when you traded the interest of the Holt heirs in the one hundred and twenty acres of land near Oklahoma City for the eighty acres of land near Ponca City?

A. No instrument whatever no paper whatever.

Q. What did you give T. J. Murphy for the eighty acres
273 of land that you have described near Ponca City?

A. Didn't give T. J. Murphy a thing for it not a thing.

Q. He just gave it to you did he?

A. He transferred it in fulfillment of that obligation to me.

Q. What did you give any one for that eighty acres of land near Ponca City that you have described?

A. I gave about $250 toward the Government price, I gave five or close to five years' service as an attorney in the contest matter which matter Batchelder had obligated himself to take care of it if Mr. Murphy didn't and some of the money was advanced for expenses in the contest over the land which was transferred to Batchelder, the one hundred and twenty acres, as the deed was originally perfected.

Q. That is the one hundred and twenty acres deeded from Samuel Murphy and wife to Ferdinand Batchelder as above referred to?

A. That is the land I refer to.

Q. How long since you have heard from Ferdinand Batchelder?

A. It is a couple of years.

Q. A couple of years?

A. Yes, sir.

Q. What aged man is he Ferdinand Batchelder?

A. About my own.

Q. You say his post office is at Boston, Mass.?

A. That is where, in my judgment it is.

Q. How long since you have heard from him there?

A. I have not heard from him since last Christmas, he sent me a very handsome Christmas present.

Q. What is Capt. Batchelder's name?

A. G. W. Batchelder.

Q. What is his address now?

A. Boston I believe.

Q. Did you have any written authority of any kind from the plaintiff, Amelia M. Holt or from the Holt heirs to complete the filing on this quarter section of land above described?

274 A. Yes, sir.

Q. Where is that written authority?

A. I can't say where it is, I have searched through part of my papers for it thinking it might be wanted in this case.

Q. How long since you saw it?

A. It is three years or such a matter.

Q. What kind of an instrument was it you referred to?

A. Just an ordinary letter in answer to mine.

Q. And that is all the authority you had just that letter from her?

A. Well your question may be construed broader than it appears on its face, the facts are that I wrote Mrs. Holt that I had won the case and that the time was about up and I would need her here to perfect the entry to the quarter section and in the letter I asked her if she could be prepared to come and suggested to her, knowing she was a widow woman, that I could advance her the money, in reply to that I received her letter in the ordinary course of mail stating that she had received this letter of mine and that she was then interested in a paying boarding house business and that she couldn't afford to throw up that business and come out here to file upon that claim and that I could do with it what I was amind to and knowing the time allowed by the rules of the Land Department for perfecting that entry, as I remember, was about up, and all my years of work and money that I had put in to it was about to be lost by reason of her refusal to come here to make the necessary filing on it and in that view of the fact that neither she or any of the Holt heirs had ever paid a cent of the expenses in the matter I felt that I had to take that way of saving what I could from the wreck, she has never written to me from that day to this concerning the matter or about anything else. My wife was back in New York last summer when I understood she was showed that letter of yours, Judge Jenkins, stating that she had an important claim that could be won by her, near Oklahoma City.

Q. Where is that letter now that you say you received from Mrs. Holt when you notified her that she had won the claim and asked her to come and file on it?

A. I haven't been able to find it but I think I have it.

275 Q. How long since you have looked for it?

A. A couple of weeks I judge.

Q. What sort of paper was that letter written on?

A. Very ordinary paper I think.
Q. Was it small note paper?
A. I think so.
Q. Where was Mrs. Holt living at the time you wrote her that letter?
A. Ellenburg Depot.
Q. Ellenburg, New York?
A. I think so.
Q. Was that before you filed this waiver or after?
A. It was before I filed the waiver.
Q. About how long?
A. I can't be positive, but it was before the waiver was filed.
Q. Now you have stated all the facts you know about the transfer to Classen of this one hundred and twenty acres of land?
A. I presume that is not all I know but it is all I recollect at this time.
Q. Will you please state any other facts that you know in reference to A. H. Classen purchasing this one hundred and twenty acres of land which is part of the Murphy McMichael claim as above stated?
A. I don't think of anything further now.
Q. Have you any interest in that claim now?
A. No, sir, I have not.
Q. Do you have any interest in what is known as the Classen Company?
A. No, sir.

Cross-examination of C. W. R. by J. H. EVEREST:

Q. Do you know whether or not Anton H. Classen paid any money to Ferdinand Batchelder for the quit claim deed or release of mortgage to this 120 acres of land?
A. Why I understood at the time that there was a consideration of I think $1500 for each of these, some checks were handed me by Stiles representing the amount of $3000. I did not know whether they were White's checks or Classen's or whose they were. But that deed was to White.
276 Q. Was there ever an understanding or an agreement between Batchelder and Murphy or between you and Murphy that Batchelder was to hold this deed to the one hundred and twenty acres of land in trust for the Holt heirs?
A. Never, that I know of.
Q. Did Levi Holt leave any heirs except his widow?
A. He sure did, my wife is a daughter by the first marriage and she has two brothers and three sisters besides that there are one or two children by the second marriage, my wife is Col. Holt's own daughter and in that connection I could further state that my wife signed off all her claims to the Col.'s New York estate, as I understand it, with the assurance that she should have whatever would come to any of the heirs out of the land now in controversy. And she has got the eighty acres in question in her own name and right.
Q. Did Mrs. Amelia M. Holt the plaintiff in this action, ever

perfect the Declaratory Statement of Levi Holt by paying the necessary two dollars of Government fees and taking the necessary steps to prove up?

A. She did not perfect it in any manner, neither the homestead entry or the entry of the declaratory statement was perfected and it was no fault of mine that this was not done I did my utmost to that end until Mrs. Holt quit me.

Q. You have already given the substance of that letter which she wrote you refusing to come down here and perfect entry, have you?

A. Yes, sir, to the best of my memory I have given the substance of it that is what caused me to put in that waiver before the time expired for perfecting entry.

Q. Did Levi Holt or Amelia Holt ever reside upon the quarter section in controversy or any part of it?

A. Certainly not neither of them was ever in Oklahoma up to the time that she and I parted company.

Q. What inquiries did Mrs. Amelia Holt ever make of you in regard to the contest case after her refusal to come out here and perfect entry on the land?

277 A. She has never written to me and I never have heard from her concerning the matter at any time since that waiver was filed, I have lived at Perry the same post office address during these years or had an office here all the time and no communication has ever reached me from her since the waiver was filed; no inquiry.

Q. You never heard anything about her claim to the land since until after Judge Jenkins had stirred the matter up writing to her and telling her that she had valuable land here?

A. No but I heard of that letter from Judge Jenkins up in New York and that it was forwarded on to her present address, just a little over a year now my wife was up there.

(Signed) C. W. RANSOM.

I, H. Eastman, a Justice of the Peace in and for Noble County, Oklahoma Territory do hereby certify that the above named C. W. Ransom the witness whose name is subscribed to the foregoing deposition was by me first duly sworn to testify to the truth the whole truth and nothing but the truth in the case aforesaid and that the deposition by him subscribed was reduced to writing and subscribed by the witness in my presence and the same was taken on the 17th day of September A. D. 1902 between the hours of eight o'clock A. M. and six o'clock P. M. of said day at the office of the Probate Judge of Noble County at the town of Perry in said county as specified in the notice hereto attached and that I am not attorney for either of said parties or otherwise interested in the affairs of said action nor am I related in any way to either of the parties in this action.

H. EASTMAN,
Justice of the Peace in and for the County of Noble,
[SEAL.] *City of Perry, Territory of Oklahoma.*

Properly endorsed, opened and filed.
Endorsed on the back: Holt *vs.* Classen Copy Deposition.

278 AMELIA M. HOLT, Plaintiff,
vs.
A. H. Classen & A. H. CLASSEN, Defendants.

Deposition of James H. Wheeler.

Mr. JAMES H. WHEELER, being duly sworn and examined testifies as follows:

Direct examination:

Q. What is your name?
A. James H. Wheeler.
Q. What is your age?
A. 34.
Q. What is your residence?
A. Oklahoma City, O. T.

Here the court adjourns until 3 P. M. the 2nd, day of September 1902 at which time the witness, James H. Wheeler appeared and being further examined testified as follows:

Q. Do you know Samuel Murphy?
"V." A. I do.
Q. Do you know Ferdinand Bachelor?
A. I do not.
Q. Did you ever see Ferdinand Bachelor?
A. Not to my knowledge.
Q. Do you know the southwest quarter Sec. 27, Township 12 North, Range 3 West in Oklahoma County, known as the Murphy-McMichael claim?
A. Yes, sir.
Q. Do you know Ewers White?
A. Yes, sir.
Q. Did Samuel Murphy ever convey you any portion of that land?
A. No sir.
Q. Where did you reside on or about the 10th day of June 1897?
A. Oklahoma City.
Q. What business were you engaged in at that time?
279 A. I was in the Bank of Commerce, an officer in the bank of Commerce.
Q. Did you know Samuel Murphy at that time?
A. Yes.
Q. State whether or not, on or about that date, Samuel Murphy executed to you a mortgage on the South-west quarter of Sec. 27, Twp. 12 North, Range 3 West of the Indian Meridian, containing 160 acres of land, in what is now known as the Murphy-McMichael claim?
A. To swear positively concerning that, I would have to refer to the records of the county, because this is past and gone four or five years ago and I am taking those things every day.
Q. Do you remember whether or not, Sam Murphy ever exe-

cuted to you a loan on the land above described, for the sum of two thousand dollars?

A. My recollection is that he did. I would not swear positively as to that without referring to the records.

Q. How long would it take to refer to the records and be positive?

A. It would only be a matter of going down stairs to consult the records.

Here witness is excused to look up the records.

Q. Have you duly examined the records?

A. Yes sir.

Q. Now what is your recollection as to making this loan to Mr. Murphy?

A. The records show that Samuel Murphy and wife gave me a mortgage of two thousand dollars, on the 17th day of June, 1897.

Q. Do you have any recollection of making that loan?

A. Yes sir.

Q. Where were you when you made that loan?

A. I was in the bank of Commerce when the papers were made out. I just have a recollection of papers being made out and the deal being closed there.

Q. Do you remember who else was present on that occasion?

A. Yes sir. Mr. Everest was present I believe.

Q. J. H. Everest?

A. Yes sir.

Q. Will your bank books show the existence of these loans to-day?

280 A. They do not.

Q. Now I will ask you Mr. Wheeler whether or not that was an actual loan, or was it a fictitious loan?

A. It was not an actual loan nor a fictitious loan.

Q. Just explain now what kind of a loan it was.

A. The mortgage was made from Murphy to myself as I recollect it now, I was trustee for this mortgage. I did not put any money in it.

Q. Who were you trustee for Mr. Wheeler?

A. That I do not know. It was done by the attorneys for the case. As I recollect it now Mr. Everest was present and Mr. Murphy and perhaps one or two others. I am not sure who was there, but they asked me to hold this until I was requested by the attorney to assign it or release it and I was trustee for one of them, I do not know which.

Q. You mean J. H. Everest? Is that the man you refer to?

A. He was the gentleman to whom I looked for advice on the subject, because he was present at the time, as I remember it now.

Q. Do you know C. W. Ransom?

A. Yes, sir.

Q. Was he present on that occasion?

A. I think he was but I am not certain.

Q. Have you ever seen Mr. Ransom since the morning it was executed?

A. Yes sir.

Q. About how long after that mortgage was executed was it until you saw Mr. Ransom?

A. I saw him frequently from that time till this.

Q. Did you ever have a conversation with Mr. Ransom after the execution of that mortgage?

A. Not that I recollect of.

Q. How long did you hold that mortgage?

A. The records show that I assigned it on the 25th day of January, 1898.

Q. Did you have any conversation with any one about that mortgage from the date of its execution up until the date of the assignment of that mortgage?

A. Perhaps I did, I could not say now.

281 Q. Do you recollect of talking to any one with reference to that mortgage after it was executed and before you assigned it?

A. No sir.

Q. To whom did you assign that mortgage?

A. Ferdinand Batchelor.

Q. Where were you at the time you assigned that mortgage?

A. I could not say.

Q. Where did you keep that mortgage while you were trustee?

A. I could not tell you.

Q. Did you have any regular place for keeping such papers?

A. I keep them in my office.

Q. Was Ferdinand Bachelor present at the time you transferred that mortgage?

A. Not to my recollection.

Q. How much money did you receive in consideration for transferring that mortgage, if any?

A. Nothing.

Q. Then if I understand it Mr. Wheeler, you in fact never had any interest in this property one way or the other, except as trustee?

A. I did not. That was all.

Q. Have you any way of refreshing your mind and telling for whom you were trustee in that transaction?

A. No sir, except as to the attorney to whom I looked for the request for the assignment or release.

Q. Who was that attorney?

A. Mr. Everest.

Q. What Everest?

A. Mr. J. H. Everest.

Q. Now in making the assignment, you believed it would be necessary for you to know to whom you would have to transfer that property?

Objected to as calling for a conclusion of the law.

Q. You accepted that trust did you?

A. Yes sir.

282 Q. And agreed to act as trustee?

A. Yes sir.

Q. And you did act as trustee?
A. Yes sir.
Q. Did you ever have any talk with C. W. Ransom about that mortgage in any way?
A. Not that I recollect.
Q. And don't you know that Mr. Ransom was claiming the proceeds of that mortgage?
A. No sir.
Q. You never knew that?
A. There was no claim made to me or against me.
Q. Nor in your presence?
A. No sir.
Q. Who informed you when it was necessary for you to make that assignment Mr. Wheeler?
A. I think it was Mr. J. H. Everest.
Q. To whom did he instruct you to make that assignment?
A. I did made the assignment to Ferdinand Bachelor, therefore I conclude he instructed me that way.
Q. You would not have transferred it without instructions would you?
A. No sir.
Q. Did Mr. Ransom give you any instructions?
A. I do not recollect.
Q. Was Mr. Ransom and Mr. Everest ever in your bank to see you in reference to this transaction?
A. I believe they were but I could not say positively.
Q. Was Ferdinand Bachelor present at the time you made that transfer?
A. I do not recollect of ever having seen Ferdinand Bachelor. It was possible I had and did not know him.
Q. When you assigned that mortgage, did you deliver it to Ferdinand Bachelor?
A. I do not know, probably not.
Q. Well what do you say about it now?
A. I said probably not. That is about the only way I can answer.
283 Q. To whom did you deliver that mortgage?
A. I cannot recollect.
Q. How is your recollection, pretty good generally?
A. Well the matter of mortgages is something we have had every day for the last ten or fifteen years, sometimes one and sometimes a dozen; and for me to say to whom and when I delivered them, would be a matter that would be impossible.
Q. There has been nothing unusual about this transaction that would direct your attention to it?
A. No sir. It was the only litigation that I ever heard of that effected this part of the transaction.
Q. You were subpœnaed to testify in reference to this transaction about two years ago, were you not?
A. I don't think I was.
Q. In the case of McMichael against Murphy and wife.

A. I don't think I was.

Q. Was Samuel Murphy and his wife present at the time this mortgage was executed to you or not?

A. I could not say.

Q. Do you recollect of Mr. Murphy or his wife, or either of them or Mr. Everest, informing you at the time of the execution of that mortgage for two thousand dollars, that it was executed in trust for the benefit of the heirs of Levi Holt?

A. No sir.

Q. Did you ever hear of Levi Holt?

A. Well in a way as I would hear about things in the streets or in the papers.

Q. You are sure that Samuel Murphy on that occasion, or Mr. Everest either one didn't inform you that that mortgage was made in trust, for securing the heirs of Levi Holt?

A. I do not recollect of its having been made in trust for Levi Holt.

Q. You have no recollection on that subject?

A. No sir.

284 Q. You would not say that these statements were made or not?

A. No sir I would not.

Q. Your mind is blank on that subject?

A. Yes sir, blank.

Q. On the occasion when this loan was made, or shortly after that time, did you hear any conversation between Mr. Murphy and Mr. Everest, in reference to deeding that land to Ferdinand Bachelor?

A. If I did I do not recollect what it was. A conversation that I might have heard in my office five or six years ago is pretty blank at this period.

Q. If you heard that conversation, your mind is a blank on it?

A. If I heard that conversation, or any other conversation, I have not a——

Cross-examination by attorney for Samuel Murphy:

Q. Mr. Wheeler you never at any time had any real interest in that mortgage did you?

A. I did not.

Q. And you have never at any time had any interest in that land described in the mortgage?

A. I have not.

Adjourned until 9:30 a. m. Sept. 3rd 1902.

J. H. WHEELER.

The taking of the deposition of the above entitled cause was resumed on Wednesday morning, Sept. 3rd, at 9:30 o'clock A. M. W. C. SADDLER being duly sworn and examined, as a witness for the plaintiff to testify to the truth, the whole truth and nothing but the truth, testifies as follows:

Q. What is your name?
A. W. C. Saddler.

Here the court adjourns till nine o'clock T-ursday morning Sept. 4th for the continuance of taking depositions in this case, said adjournment being had for the want of witnesses, Samuel Mur-
285 phy, A. H. Classen and J. H. Everest.

In the case of Amelia M. Holt, Plaintiff, against Samuel Murphy and A. H. Classen, the taking of testimony is resumed at 9.50 A. M. Sept. 4th and A. H. Classen, being called as witness and being duly sworn to testify to the truth the whole truth and nothing but the truth, testifies as follows:

Q. State your name, age and residence.
A. My name is Anthony H. Classen, my residence is Oklahoma City, O. T. I am 40 years of age.

By consent of both parties, plaintiff and defendant and the witness the taking of this deposition is adjourned till 9 A. M. Sept. 5th.

Thursday morning Sept. 5th, 1902, by consent of both Plaintiff and defendant the taking of the deposition of A. H. Classen is resumed at 9:30 A. M.

Direct Examination:

Q. Where did you reside on or about the 12th day of May, 1899?
A. Oklahoma City.
Q. Where did you reside on or about the 14th day of June, 1897?
A. I have resided in Oklahoma City since some time in May 1897 up to this date.
Q. What official capacity, if any, did you occupy on the 14th day of June 1897?
A. At that time I was receiver of the United States land office at Oklahoma City.
Q. When did you assume the duties of Receiver of the land office at Oklahoma City?
A. I don't remember now. I think it was the 1st of March or the 1st of April, 1902.
Q. When did you assume or enter into your official duties as receiver of the land office at Oklahoma City?
A. The first of May, 1897.
286 Q. State whether or not it was your duty as receiver of the land office to hear proofs, that is final proofs, preparatory to issuing patent in the land office.

Objected to as calling for the opinion of the witness as to a proposition of law, and as incompetent, irrelavant and immaterial.

A. I don't know exactly what my official duties would have been in that respect. I know the register took entire charge. He took the proofs.

Q. Was it any part of your duty to hear these proofs or inspect them in any way?

Objected to as last above.

A. I don't know exactly what my official duties would have been in that respect. I know the register took entire charge. He took the proofs.

Q. Do you know whether or not it was a part of your duty to examine the proofs, Mr. Classen?

A. The duty of the receiver is to take care of the money received in the United States Land Office, and accounts for that, and the legal side of the office is taken care of by the register; and at that time we had a man that was very efficient, and he took care of that side of the office.

Q. Is it any part of the duty of the receiver of the land office to inspect these final proofs?

A. I don't know as it is.

Q. Did you ever do any of that kind of work while you were receiver of the land office?

A. Not while Mr. Dilley was in the land office. He took care of that entirely, and I paid no attention to it at all. If there was anything that I did, it was in a formal way.

Q. Did you afterwards examine these final proofs?

A. There was for a time that I took care of a great deal of the office.

Q. The final proofs you mean?

287 A. The final proofs I have taken were since March, 1902.

Q. I am asking you now what you did while you were receiver of the land office. Did you ever examine these final proofs and relinquishments or waivers that were filed while you were receiver of the L. O.?

A. No I did not examine them.

Q. Did you ever correspond with the land department in reference to any of these final proofs or relinquishments?

A. I don't remember. We may in a formal way, but I don't remember. We have four or five clerks that take care of this correspondence.

Q. Was it any part of your duty to carry on a correspondence with the Department with reference to these final proofs?

A. I don't know that I could answer that. The offices of Register and Receiver are so closely allied that one or the other may act in these matters. Sometimes they may be absent on a leave of 30 days or more when the officers in charge take care of the office.

Q. Then the Receiver would have authority to act in passing on these questions of final proof, would he not?

A. There is a statute somewhere that would settle that. I could not answer that.

Q. Now were you acquainted with Samuel Murphy on or about the 14th day of June 1897?

A. I am acquainted with two Samuel Murphys I do not know which one you mean.

Q. Just tell the Samuel Murphys you know now.

A. There is a Samuel Murphy that is Postmaster and he has a nephew Samuel Murphy.

Q. Where does that nephew live?

A. Somewhere in the north part of town.

Q. How long have you known the nephew?

A. I have just seen him. I do not know that I personally know him.

Q. How about that other Samuel Murphy?

A. That other Samuel Murphy, I have known him about ten years.

Q. That Samuel Murphy you speak of now is a party to this suit, is he?

288 A. The Samuel Murphy that I know is the Postmaster. I don't know whether it is the same man or not.

Q. You have heard of a suit styled Amelia M. Holt *vs.* Samuel Murphy?

A. I don't know which one you mean. I have heard of several of them.

Q. Have you heard of this one suit against Samuel Murphy and A. H. Classen?

A. I think there are several suits pending. I don't know which one you mean.

Q. Do you know of more than one suit against Samuel Murphy?

A. I think there is a suit pending for title and another for damage. I think there are several suits. I have not paid much attention to them.

Q. You are not much interested in it?

A. Not so very much.

Q. Now I refer to suit No. 3021, amended petition being filed Feb. 15th, 1902, in the district court of Oklahoma County.

Here the attorney hands the petition *hands the petition* to the witness for inspection.

Q. I will ask you if you know the Samuel Murphy referred to in that petition?

A. Yes sir, I am acqauinted with that Samuel Murphy.

Q. How long have you know- that Samuel Murphy?

A. I have known him for about ten or twelve years.

Q. Do you know Ewers White?

A. Yes I am acquainted with Mr. White.

Q. How long have you known Mr. White?

A. About eight or ten years.

Q. Do you know C. W. Ransom?

A. Yes sir I am acquainted with Mr. Ransom.

Q. How long have you known him?

A. For the past eight or ten years. I don't remember exactly how long.

Q. Do you know Ferdinand Bachelor?
A. No I don't think that I am acquainted with him unless that is Captain Bachelor.
Q. Do you know J. H. Everest?
A. Yes sir.
289 Q. How long have you known Mr. Everest?
A. About ten or twelve years.
Q. Do you know the South-west quarter of Section twenty-seven, township twelve north of Range three west of the Indian meridian in Oklahoma County known as the Murphy-McMichael claim?
A. Yes I am acquainted with the Murphy-McMichael claim. I don't remember exactly what the description of it is.
Q. The land that I speak of adjoins Oklahoma City on the North-east. Is that the land you refer to?
A. I refer to the Murphy-McMichael claim. There is only one claim of that kind. I guess it is the same land.
Q. Where is that land situated you speak of?
A. North of Oklahoma City and east of the Santa Fe track.
Q. Do you know who is in possession of that land at this time?
A. No I don't. I know who is in possession of part of it.
Q. Do you know who is in possession of the west half and the north-east quarter of that claim?
A. The Classen Co.
Q. Were you ever in possession of it?
A. Yes I was in possession of it before it was deeded to the Classen Co.
Q. From whom did you obtain your possession of that land?
A. I think I obtained it through a writ of the district court of Oklahoma County, O. T.
Q. Who were in possession of that land before you were in possession of it?
A. I think a man by the name of Wm. McMichael.
Q. Did you at any time purchase that land from any person?
A. I think I did. I think that was the way I got possession of it.
Q. From whom did you purchase that land?
A. I purchased from a man by the name of Ewers White.
Q. What consideration did you pay Mr. White for that land?
A. I don't distinctly remember now what the consideration was.
290 Q. Did you pay the consideration named in the deed?
A. I paid that, and then I paid some more. There was a title to clean up. White was a claimant, Bachelor was a claimant and through my attorney I had the title cleaned up. Mr. J. H. Everest was my attorney.
Q. How much did you pay Mr. White for that land?
A. I don't remember. The land all told with cleaning up the title cost about $8000.00.
Q. Would the deed assist you any in telling how much you paid Mr. White for that land?
A. No I don't know that it would.
Q. Did you pay all that money at one time?

A. I think it was paid at one time.
Q. Where were you?
A. Oklahoma City.
Q. What particular place?
A. I don't remember that.
Q. Did you pay in money or check?
A. I suppose I paid in money or check.
Q. Could you look over your checks and refresh your memory as to how you paid that?
A. No I could not. It was four or five years ago and I could not lay my hand on the check at this time.
Q. In what bank did you keep your deposits at that time?
A. I kept most of my money at the State National.
Q. Where else?
A. I kept some at Edmond at the People's Bank.
Q. Where else?
A. I think that is about all.
Q. You think you paid that in check?
A. I don't remember I might have done so. I generally make my payments in checks.
Q. You have no way of refreshing your memory?
A. No sir.
291 Q. You don't keep checks?
A. Not as a rule.
Q. The bank records would show that you had given an $8000.00 check would it not?
A. If I had, I suppose it would.
Q. Now to refresh your memory didn't you give Mr. White a note for $2500.00 for his interest up there?
A. I don't remember whether I paid him some money and gave him a note. I gave him a note for some of it.
Q. Don't you recollect that you gave him a note for $2500.00 and that he sold it to the bank at McLoud?
A. I don't remember what the amount of the note was. I gave him a note for part of it, but I don't remember the details.
Q. How is it you cannot remember?
A. I have thousands of those transactions.
Q. Were you having thousands at that time?
A. A great many.
Q. Along about the time you bought this land from Mr. White?
A. Yes I had a great many transactions.
Q. Who did you first talk with with reference to buying this land from Mr. White?
A. I don't remember. I think it was Captain Stiles.
Q. Captain Stiles, where is he now?
A. I think he is dead.
Q. Who is the next man you talked to about that?
A. I don't know.
Q. Did you make this deal with Mr. White?
A. Yes I made the deal with Mr. White and I think Mr. Bachelor

rather looked after it through Captain Stiles. He rather fixed up the deal with Mr. Ransom.

Q. Did you talk to Mr. Ransom and Mr. White both? Did you ever talk to Mr. White about this trade before you closed it?

A. I suppose I did.

Q. Don't you remember of talking to him?

292 A. I might have talked with him. I don't remember any details.

Q. Do you remember what he asked you for his part of that 120 acres?

A. No I don't remember. I think what he was to have was $2500.00.

Q. What he was to have was $2500.00.

A. Yes sir.

Q. Who else was to get anything out of that trade?

A. This man Bachelor was to have a certain amount.

Q. Do you remember what he was to have?

A. No I don't. I don't remember how much it was he was to have.

Q. What Bachelor was it that was to have some of it?

A. I could not say. I could not say what Mr. Bachelor. It was fixed up between Captain Stiles and Mr. Ransom.

Q. What Mr. Ransom do you refer to?

A. C. W. Ransom.

Q. Did you hear anything about Jim Wheeler having a claim on it for $2500.00?

A. I don't remember. I had no dealings with him at all. I do not know what interest he had in it.

Q. About the $2000.00 mortgage you do not know what interest he had?

A. I had no dealings with anybody except Captain Stiles and Mr. Ransom. I don't know who was in it. According to the abstract these parties had the title and I fixed it up with them.

Q. Can you recollect now that the abstract showed that they had the title?

A. No I don't.

Q. You don't recollect that now?

A. No I don't.

Q. Did you ever have any talk with Ferdinand Bachelor with reference to this deal in any way?

A. I don't remember seeing the gentleman.

Q. Don't you remember of paying him $3000.00 for his interest in the land?

A. I dealt with Captain Stiles and Mr. Ransom in this

293 matter. I don't remember anything about Mr. Bachelor or Mr. Wheeler.

Q. Then you never did pay Ferdinand Bachelor $3000.00?

A. I never saw the gentleman, so I suppose I didn't pay him that amount.

Q. Did you take care of that $2000.00 Wheeler mortgage?

A. No sir I dealt with Captain Stiles and Mr. Ransom.

Q. You know whether you took up that note and mortgage, don't you?

A. I didn't see any note or mortgage. I didn't deal with anybody else.

Q. Did you just take their word for it or did you look at the abstract?

A. I suppose I looked at the abstract.

Q. If the abstract showed a note and a $2000.00 mortgage you would not buy it without seeing that that was taken care of?

A. I suppose I would not. I don't know what I would do, I suppose I would not.

Q. So your mind is a blank on that. You don't know what you would do in a case of that kind?

A. It would be very uncertain what I would do.

Q. If you were to see that a $2000.00 mortgage was on a piece of land, it would be very uncertain whether you would see that it was paid off or not?

A. I don't know what I would do. I have an idea that I would see that it was taken care of.

Q. Don't you know that you would see that it was taken care of?

A. I don't know what I would do.

Q. You have had some experience in trading haven't you?

A. I have had some yes.

Q. Do you usually look to see whether the mortgages are paid, or just take anything without looking?

A. I could not refer to any of my details. I cannot remember.

Q. Your recollection is blank in reference to mortgages?

A. On all nonsensical questions, yes. It is supposed that any reasonable man would take care of them if there were any mortgages. I don't know what he would do.

Q. Did you ever have any talk with captain Bachelor with
294 reference to the purchase of this 120 acres of this McMichael's land?

A. No.

Q. Was there any conversation with Captain Bachelor in your presence with reference to the purchase of that land?

A. No.

Q. Was any of this $8000.00 that you claim that you paid, paid to Captain Bachelor by you?

A. No.

Q. Did you have any talk with C. W. Ransom with reference to the purchase of this land?

A. Captain Stiles took this matter up when Mr. Ransom was here and I suppose he had a talk with him.

Q. Did you have a talk?

A. I suppose I did. I don't remember any details. He had the business side of it, and I think he received the money.

Q. At that time did you attend to your own business or did you have it done by agents?

A. Some I attended to and some I did through agents.

Q. This particular business you don't remember anything about?

A. This particular business no.

Q. Do you remember at the time you purchased it that there was a law suit between McMichael and Murphy?

Objected to as immaterial.

A. I think the abstract showed that there was a suit pending of some kind for possession.

Q. Do you not recollect?

A. I think I do yes.

Q. Do you recollect at the time you purchased this land that McMichael was in possession of it?

Objected to.

A. I think he was in possession of it.

Q. Did you have any talk with Mr. Ransom or Mr. Murphy or Mr. Everest with reference to McMicnael's possession and claim to that land at that time?

295 A. I think I had a talk with Mr. Everest. I think he looked up the matter, and I think he advised me.

Q. He advised you on that subject?

A. He had that matter in charge, and I think he advised me as to the suit.

Q. And you bought it with full knowledge of that suit?

A. I suppose I was informed.

Q. Did you have any conversation with Mr. Bachelor or Mr. Ransom with reference to the claim that this man Ferdinand Bachelor was setting up to that land?

A. I don't remember any particular conversation. The title was looked up to the land.

Q. Did you have a talk with Mr. Everest about it?

A. I have stated three or four times that I was advised by him.

Q. I asked you if you had any talk with him about Ferdinand Bachelor's claim to that land.

A. Mr. Everest was my adviser. I don't remember what talks I had with him.

Q. When you consummated this trade, to whom did you turn over that check you speak of?

A. I think that Ransom got some of it, and I think that McMichael got some of it. I know the deal was rather divided. There was a second deed that had been given to Mr. Ransom, and there was a mortgage and I forget exactly how the settlement was made.

Q. Do you know whether or not in regard to this Ferdinand Bachelor deed, that Ransom was settling a claim for that?

A. No I don't know anything about that.

Q. Do you know how much money Mr. Ransom got out of that deal?

A. No I don't.

Q. What was your understanding?

A. I say I don't know. You asked me what I knew.

Q. You don't know whether he got any or not?

A. I don't know anything about it.

Q. Do you know how much money Captain Bachelor got?
296 A. No I don't know anything about it.
Q. Do you know how much money Ferdinand Bachelor got?
A. No I don't.
Q. Ewers White?
Q. No I do not.
Q. To whom did you pay this money?
A. If I remember right I paid some of it to Mr. Ransom, and I think there was some of it paid to Mr. White.
Q. Was there any paid to anyone else?
A. There were court costs and attorney's fees, Mr. Everest took care of some of that.
Q. Mr. Everest, do you know how much?
A. No I don't.
Q. Do you remember of paying Samuel Murphy $800.00?
A. I don't know whether Murphy got some of it or not. I am not sure of it.
Q. Do you remember of testifying once in the case of McMichael against Murphy?
A. Yes.
Q. I will ask you if you did not testify in that case that you paid Samuel Murphy $800.00 of that money?
A. I don't remember what the testimony was.
Q. Whatever you gave was true?
A. Yes.
Q. Didn't you testify that you paid Ferdinand Bachelor $3000.00?
A. I don't remember that.
Q. Whatever you testified to was correct was it?
A. At that time I may have taken up the deed and have been asked who received this money and might have stated that Bachelor received it. If I did what I meant by it was that I had my dealings with Captain Stiles and Mr. Ransom and I don't know who received this money. I don't know anything about that.
Q. Do you recollect of testifying in that case that you paid off this $2000.00 which Mr. Wheeler had?
297 A. I don't remember.
Q. Whatever you testified in that case was correct?
A. I suppose that the testimony would be sufficient, wouldn't it Mr. Everest?

Mr. Everest answers that it will.
Witness answers, I don't recollect.

Q. How much money did you have on deposit in the State National Bank on or about the 13th day of May, 1899?
A. I don't know. I could not answer.
Q. Did you have as much as $8000.00?
A. I don't know.
Q. Could you give any kind of an estimate?
A. No I could not.
Q. You got this $8000.00 as I understand it. You evidently had

enough in the State National Bank and the Peoples Bank at Edmond to pay this $8000.00 did you?

Objected to as interfering with witness' testimony.

A. I don't know how much money I had in the bank. I did not have much money. If I wanted to make a purchase of some kind, I would go and borrow some money. This deal was divided up, part notes, part court costs and part paid to Ransom. I could not say how much money I had.

Q. Have you paid off the notes you executed on the 13th day of May, 1899, and the execution of this purchase of that 120 acres of land?

A. Yes sir. A long time ago.

Q. Where are those notes now?

A. I don't know where they are.

Q. Do you preserve your notes?

A. I don't preserve the old ones, if I did I would have a great many preserved.

Q. Have you any way of producing copies of those notes you paid off?

A. No I don't know as I have.

Q. Will you look through your papers at the noon hour to see whether you can find those notes?

298 A. No I will not promise you that I will go through all the papers and spend my noon hour that way.

Q. You refuse to make any investigation or produce the notes or give any information on that subject, is that right?

A. If there is any testimony that is best or that ought to be produced I am willing to produce it; but when you ask me to go back in detail to the very smallest transaction that I had four or five years ago, I don't see that I could do that. My checks and notes and different papers of that kind are very numerous.

Q. Will you produce those notes which you purport to have given in that transaction?

A. I don't think I have them anywhere. I don't know where to lay my hands on them. If I can get them you are welcome to them.

Q. Will you make a search for them?

A. Yes.

Q. Did you ever have any conversation with Samuel Murphy with reference to the purchase of this land from Ferdinand Bachelor and Ewers White?

A. I don't remember now that I had any conversation with them in particular. I might have said something to them about it. In regard to this transaction I had, it was consummated by Mr. Everest and Mr. Stiles. They were the ones really that talked it over. I think Mr. Everest talked with Mr. White, and I think Mr. Stiles talked with Mr. Bachelor or Mr. Ransom or whoever it may be.

Q. Who did you talk with?

A. Mr. Everest and Mr. Stiles looked after it for me.

Q. Who represented the Bachelor interests in that talk?

A. I think I have answered that question a half a dozen times in

the preceding questions. Mr. Stiles took care of that side and I don't know who talked; but I can tell you this that in this whole transaction that I have been honest. I have not cheated anybody out of a dollar.

Q. Then if I understand it, in making this trade Mr. Everest talked for you and these other parties for themselves as far as you know?

A. I don't know.

Q. You don't have any recollections on the subject at all?

299 A. No I dealt with Captain Stiles and Mr. Ransom in this case.

Q. You at that time knew who Mr. Stiles represented in the trade did you?

A. I don't know. I think Mr. Stiles knew Mr. Ransom and was acquainted with Charley Ransom as he called him.

Q. And he represented Charley Ransom?

A. I don't know who he represented. He said he could clear up that part of the land, the Bachelor title, I think.

Q. Mr. Everest advised you when this Bachelor title was brought in, and advised you as to the sufficiency of that title?

A. He was my attorney and I supposed it was.

Q. You don't remember anything on that point?

A. I am satisfied he advised me correctly.

Q. You have no recollection as to what that advise was?

A. No.

Q. You have no recollection of his giving you any information as to who the claimants were?

No answer given.

Q. Do you preserve your old checks and notes, Mr. Classen?

A. I preserve them for awhile. I don't let them accumulate. There are so many of them.

Q. How long do you let them accumulate?

A. Sometimes two and three years.

Q. Then what do you do with them?

A. I suppose they go in the waste basket or stove. I don't know what the average man does with his refuse. I suppose I would do the same with mine.

Q. Do you have any recollection?

A. Some went in the wastebasket, some into the stove and some *some* were swept out. I could not tell in detail.

Q. Do you have any recollection as to what you did with your old notes and checks whether you preserved them or scattered them as above detailed?

A. I generally preserve them for awhile and then destroy them.

300 Here counsel asks another question in regard to witness destroying or burning his notes and checks which witness does not answer.

Q. You knew that the Secretary of the Interior in the contest be-

tween Samuel Murphy, McMichael and Levi Holt awarded this land as above described to the heirs of Levi Holt did you?

A. I know that now yes.

Q. Did you ever make any investigation as to the rights of the Holt heirs?

A. No I did not.

Q. Never asked any questions about that?

A. No I left it to my attorney. He looked up the matter entirely.

Q. He advised you that it was all right?

A. I suppose so.

Q. Now if I understand you, you asked no questions but left the whole matter to Mr. Everest in reference to these Holt heirs?

A. The Holt heirs did not come up. I don't remember anything about the Holt heirs. There is nothing about the Holt heirs that I know of. The abstract showed that the land had gone to patent and the deed had gone to White, and I think another deed had gone to Bachelor or some body. It seemed that there were two deeds.

Q. You did not ask questions about these deeds?

A. I don't remember.

Q. You know the abstract showed that Bachelor had only made a quit claim deed, do you?

A. I don't remember.

Q. You looked over the abstract?

A. I don't remember.

Q. Do you remember of ever having seen the abstract?

A. Yes I have seen the abstract.

Q. You have no recollection of ever looking into that abstract or trying to ascertain about it for yourself?

A. No not in particular.

Q. You are a regular, licensed, practicing attorney are you not, Mr. Classen?

301 A. Yes I think I am admitted to practice.

Q. You were at the time you purchased this land in controversy were you not?

A. Yes.

Q. You could have ascertained all about what the record showed in regard to that title if you had been disposed to look it up, could you not?

A. I don't know I suppose I could have looked it up.

Q. You know now that Ferdinand Bachelor at that time held that land in trust for the Holt heirs, do you not?

A. No I don't know a thing about how he held it, or anything about it.

Q. Do you know now that Mr. Wheeler's mortgage was simply a trust created for the benefit of some one?

A. No.

Q. Have you ever asked Mr. Wheeler anything about it?

A. No.

Cross-examination:

Q. Mr. Classen if I understand you correctly in purchasing this land you endeavored to buy up all the adverse claims as shown on the abstract of title under the advise of your attorney?

A. Yes sir.

Q. Did you obtain a deed from Ferdinand Bachelor, a conveyance of some kind?

A. I obtained a conveyance of some kind. I don't remember what it was, whether it was a warranty deed, a quit claim, or what it was, and I don't remember how this deed read. I don't remember whether this deed was made to Mr. White or whether it was made to myself. I don't remember the details.

Q. These transactions occurred back in 1898 & 1899?

A. Some where there I think, '98 or '99, I think 1899.

Q. Do you recollect about how long ago you gave the testimony in the case of Amelia M. Holt *vs.* Samuel Murphy referred to by opposing counsel?

A. I think that was about three years ago, possibly four.

302 Q. The facts then were fresher in your mind than they are now?

A. Yes I think they were.

Redirect examination:

Q. Mr. Classen if I understand your testimony you paid $8000.00 for that land, but you don't know who received that money?

A. I paid between $7000.00 & $8000.00.

Q. But you couldn't name the parties who received that money?

A. No I don't remember the parties that received that money. There was as I stated before as connected with that some court costs, attorney's fees and I suppose White received some consideration, and the Bachelors I suppose received some consideration. Exactly in detail I could not say who got it.

Q. Mr. Everest was present when this deal was closed, was he?

A. I don't remember whether he was present or not.

Q. Do you know whether anybody was present or not?

A. When that deal was made, there were several different deeds, and I suppose the transaction was in piecemeal. I don't think it was all made in one deal, in fact I know it was not.

Q. Do you know that Mr. Everest was present at the close of any one of these deals?

A. No, I don't remember.

Q. You have no recollection on that subject at all?

A. No, I have not.

Here counsel states that he wishes to further — Mr. Classen after he looks through his records to see if he can give any further information as to who he paid this money to.

Mr. Classen being recalled to the stand stated that he had hunted among his papers and could not find his notes or checks referred to above.

Mr. CLASSEN re-called:

Q. Did you find those papers, Mr. Classen?
A. No sir.
Q. No checks?
A. No sir.
Q. No notes?
A. No sir.

A. H. CLASSEN.

303 Deposition of witness to be used in an action pending in the District Court within and for Oklahoma County, in the Territory of Oklahoma, in which Amelia M. Holt is plaintiff and Samuel Murphy and A. H. Classen are defendants, in pursuance of the notice herewith attached, and at the time and place therein stated the said Amelia M. Holt, plaintiff, appeared by her attorney J. S. Jenkins, and the defendants appearing, A. H. Classen in person, and by their attorney J. H. Everest.

And thereupon, said A. H. CLASSEN being produced as a witness, who demanded his fee of one dollar, and said fee being to him then and there paid, was then and there first duly sworn and testified as follows:

Q. State your name, are and residence.
A. Anton H. Classen, age 41, residence Oklahoma City.
Q. Mr. Classen, we have a subpœna of *duces tecum* served on you this morning to bring your notes, checks, stubs and other written evidences showing the times and amounts and persons to whom you paid the purchase money for the North Half and the South West Quarter of the South West Quarter of Sec. 27, Twp. 12, Range 3 West, being known as a part of the Murphy-McMichael claim, said conveyance and purchase purporting to have been made on the 13th day of May, 1899. Did you bring those papers into court with you before the officers taking this deposition this morning?
A. I spent quite a large amount of time looking over what I could find in the way of notes and evidence, and I find that I have the White note, $2500, which was paid, and I have a note to Mr. Everest for $500, which was paid, and that is all that I could find.
Q. Have you those notes?
A. Yes sir.

Here counsel wishes to inspect the above mentioned notes, and witness turns them over to counsel.

Q. Do you know when you paid this $2,500 note to the Bank of McLoud?
A. I think it was paid when it was due. Half of that note was paid and I think I gave a note for the other half to Mr. Hollis.
Q. You renewed half of this note?

A. Yes, I renewed half of that note, if my mind serves me right.

Q. Has that renewal ever been paid?

304 A. Yes sir.

Q. When?

A. I don't remember now. I think a year later.

Q. Have you that note?

A. I think I have.

Here witness produces and hands attorney for plaintiff note referred to. Witness also exhibits to attorney for plaintiff the note referred to in the preceding question.

Q. Now, you paid half of that note, the $2,500 note, and renewed the other half to Thomas Hollis & Co. on the 15th day of January, 1900, as shown by the note?

A. Yes sir, I think so.

Q. You have two notes here executed to Thomas Hollis & Co. dated on the 15th day of January, 1900, one for $25 and the other for $1,250. Were both of these notes executed as a renewal as a half of the $2,500 note?

A. I think they were. I think one was for interest, the small note.

Q. Now, did you ever renew this $1,250 note dated January 15th, 1900?

A. I don't remember. If the note is there it shows it. I think I did.

Q. I see there is another note for $1,250 dated at McLoud, January 15th 1901. Is this a renewal of the note dated January 15, 1900?

A. Yes, I think it is.

Q. When did you pay this last note dated January 15, 1901?

A. I paid it when it was due.

Q. It was due one year after date. Then you paid that note on the 15th day of January, 1902. Is that right?

A. The note was due at that time, and I paid it at that time.

Q. Do you remember whether you paid it with a check or with money?

A. I don't remember. However, it was paid.

Q. Well, do you carry large amounts of money like that around in your pockets?

A. No, I generally don't.

Q. If you paid that note on the date stated here, your bank book and the books at the bank would show it paid, would they not?

A. No, not particularly. I often go to the bank and get a thousand dollars or two thousand, and pay my bills, whatever I have.

305 Q. When you get money at the bank, you either write a note or a check for it?

A. Yes sir.

Q. Then there would be a record in some bank of the payment of this note?

A. Why, I do not know. I might have just received some money.

I might have received some consideration from Edmond sales, and might have made some other sales. Sometimes we pay somethings in check that we just endorse over; and sometimes I go to the bank, and if I have any indebtedness, I might make a loan and use part of the loan, and make part deposit in the bank.

Q. You have no recollection in the world now as to how you paid this?

A. No, I think I paid it in money. I don't remember now.

Q. Well, have you any note or check showing you paid the first half of the Ewers White note?

A. No, I don't think I have. I swear positively that the note has been paid.

Q. How can you recollect that when you cannot recollect anything else about it.

A. Mr. Hollis is a pretty good business man, and I feel sure that he would not have delivered the note if I had not paid him.

Q. Then all you know about the payment of this White note and this renewal is just simply that you have the possession of the notes paid off?

A. That is all I remember. I don't remember exactly how it was paid. As I have stated, it may have been paid partly in a check or a draft or something of that kind. I don't remember the payment in detail. I know that I paid half of it, and had half of it renewed, and later on paid the other half.

Q. And that is all you do recollect?

A. Yes, that is all I recollect.

Q. Do you recollect, Mr. Classen, whether you paid these notes or any part of them by money received from Edmond and other places in cash.

306 A. No, I don't remember how they were paid. I don't know whether it was in bills or in gold or in notes or checks. I know that I made the payment, but I can't remember just in detail how it was. I think I paid it in money. I think I went to the bank and got the money.

Q. That is your best recollection?

A. I don't know how to answer. It seems to me that I have answered that three or four times, and I don't understand you.

Q. Do you remember any one circumstance of your own knowledge of ever paying any money on these notes? If so, tell me what it is. If you don't recollect, you can say so.

A. Mr. Hollis came to the office with a note and I paid him half and renewed the note; and then the other note when it came due, if I remember rightly, I sent him a check or a draft to McLoud.

Here attorney for Mrs. Holt returns to Mr. Classen the notes which were delivered to him for inspection.

Q. I notice from the records in the Recorder's office that you conveyed this 120 acres of land which I have described to the Classen company, do you remember about the date of that conveyance?

A. It was sometime in the spring of 1902, and I suggest that the best testimony about that would be in the Recorder's office. I can't remember the date.

Q. You think that would be better than the deed itself, do you.

Objected to as absolutely foolish.

Q. Who constituted the Classen Company at the time you conveyed this 120 acres of land to the Classen Company?

Objected to as immaterial and irrelavant.

A. The Classen company consisted of George E. Gardiner, President, of the Lion Store, George H. Braur, who was our secretary and treasurer, and E. W. Johnson and Anton H. Classen.

Q. What was the capital stock of that company?

A. $150,000.

Q. What was the consideration paid to you for the conveyance of this 120 acres of land above described to the Classen Company?

307 A. This land was conveyed with other land, and there was no particular piece. There were various tracts and lots that were deeded to the Classen Company, and I suggest that better testimony would be derived from the records in the Recorder's office.

Q. The records in the Recorder's office show that you received $300,000. Was that a fact, or was that not a fact?

A. Well, I guess that was a fact.

Q. Well, do you know? You say you guess it.

A. Yes I know.

Q. Was this consideration paid in money or in something else?

A. This consideration was $150,000 in notes and $150,000 in stock.

Q. Who signed these notes?

A. Well, I suppose the president of the Classen Company.

Q. Who was the president of the Classen Company?

A. George E. Gardiner.

Q. And when you made this trade, you made no estimate as to the value of this 120 acres separate from other land that was conveyed?

A. No, it was all put together. There was this piece of land, and there was Highland Park and North Broadway, etc.

Q. You just estimated the whole thing together at that amount?

A. Yes sir.

Q. Now, Mr. Classen, I notice in consideration of this deed of May 13, 1899, you claim to have paid a certain amount of costs here in the court. Do you know how much that cost was that was paid?

A. No, I don't remember exactly.

Q. Do you know for certain that you ever paid any costs?

A. It was estimated. I think it was paid. I would not be sure.

Q. I would ask you just to refresh your mind if it was not $4.90 up to May 13, 1899?

A. I don't remember. It seems to me that it was near $50.00.

Q. Do you know in what case it was?

A. No, there was a number of cases, and I was to pay the costs, one against Murphy and another against white and there was a number of cases.

308 Q. To refresh your memory, I will ask you if there was not one case of Ewers White against McMichael, and that was the only case pending at the time.

A. I don't remember. I left that to Mr. Everest. I believe he can answer that better than I can. I know there was court costs and taxes etc. I don't remember what they were, but I paid them.

A. H. CLASSEN.

Mr. J. H. EVEREST being duly sworn and examined to testify to the truth, the whole truth and nothing but the truth testifies as follows:

Direct examination:

Q. State your name, age and residence.
A. J. H. Everest, residence Oklahoma City, age 37.
Q. Do you know Samuel Murphy, the defendant in this suit?
A. Yes sir.
Q. Do you know Ferdinand Bachelor?
A. I think that I have met Ferdinand some six or seven years ago, but I could not be positive about that.
Q. Do you know Ewers White?
A. I know him well.
Q. Do you know C. W. Ransom?
A. I have known him twelve years.
Q. Were you present in the land office at the time Samuel Murphy was making his final proof?
A. Yes, I was. He was there several times in connection with that proof, and I think I was there every time.
Q. Do you know whether C. W. Ransom was present or not?
A. He was not present when Murphy submitted his proof, but he was present when the release of the Holt heirs was signed and the final receipt was signed.
Q. Were you present at that time?
A. Yes sir.

Q. Do you know anything about Murphy's paying Ransom
309 $2000.00 in consideration of filing that waiver?

A. After the Secretary of the Interior had decided the case in favor of the heirs of Levi Holt, Ransom, who had represented Levi Holt in his life time and afterwards had represented the heirs in that litigation, came to me and told me that a settlement could be made of that controversy. I asked him on what terms a settlement could be made, and he told me that the widow of Levi Holt was unwilling to come down and perfect a title and that she was his mother-in-law or step mother in-law, and was quite old, and that she did not want to leave New York and come down to live there on the land, but preferred a sum of money for a part of the land; and after consulting with Samuel Murphy and after several propositions had passed back and forth between Ransom and myself representing the two interests, Mr. Ransom said that for $2000.00 or a note and mortgage securing that amount, or for a deed for a hundred and twenty acres of the land a settlement and a compromise of the controversy could be obtained so that Murphy could perfect title. Murphy accepted that proposition, and it was agreed that he was to execute a note mortgage for $2000.00 and was to have the option as I recollect it of taking that up or making a deed to a hundred and

twenty acres of the land afterwards; and he did make by direction of Ransom a note and mortgage on J. H. Wheeler for $2000.00 and he also executed a deed to the west half and the north-east forty of the quarter section involved, which latter deed was to be placed in escrew until patent had issued to the land.

Q. To whom was that deed to be made?

A. When it came to making the mortgage and deed, I asked for the names of the parties it was to be made to, and Mr. Ransom directed me to have the mortgage made to J. H. Wheeler, with the understanding that Mr. Wheeler was to assign or release the mortgage upon the joint request of Mr. Ransom and myself, to whoever Mr. Ransom might name; and the deed was directed to be made by Ransom to Ferdinand Bachelor, who he said was settling the matters. This accordingly done, and on the date the final receipt was issued to Samuel Murphy, a waiver of preference right or relinquish-
310 ment as you might term it was filed by Mr. Ransom with Judge B. M. Dilley, then Register of the land office. Judge Dilley approved the relinquishment, examined and approved the proof, and ordered final receipt to issue to Samuel Murphy; and the commissioner of the general land office afterwards approved of the action of the Register, Mr. Dilley approved the proof and issued patent in the regular order of business.

Q. That brings you down to the issuance of the patent?

A. Yes sir.

Q. For whose benefit was Mr. Wheeler holding the mortgage that you have been referring to, the $2000.00 mortgage?

A. Well that would be hard to state. He acted as a go-between there, the idea being that if McMichaels got a new hearing so that Murphy failed to get his title and get patent, then Murphy would have nothing to pay. The note and mortgage would be cancelled and returned to him. I suppose in that sense he acted as a go-between and escrew trustee, as you might term it, for both Murphy who gave the note and for the parties whom Ransom represented.

Q. That was the Holt heirs?

A. He pretended to represent the Holt heirs whether or not there were any Holt heirs we had no means of knowing.

Q. Don't you know that on June the 14th, 1897, the date on which Mr. Ransom executed the $2000.00 waiver and the date of the execution of these mortgages that Murphy's review had always been denied?

A. That is true, but he still had a right to file a petition of review, and it was within the supervisory power of the Secretary of the Interior to take any steps in the case he thought might be proper prior to the actual issue of patent.

Q. And your understanding was that those conveyances were made in trust for the benefit of the Holt heirs in case that McMichael's petition for review should be over-ruled?

A. Well if he should file any. We do not know that he filed any. He was contesting for the land. I supposed that Ransom had settled with the Holt heirs or would settle with them. I believe that

a large part of the money received from the compromise
311 was going to Ransom personally as attorney fees and to reimburse him for money expended in the litigation under some settlement or agreement he had with the Holt heirs. I had no idea that there was any conflict between Ransom and the Holt heirs.

Q. Do you remember the circumstances of Mr. Classen purchasing the south half and the north-east quarter of the Murphy-McMichael land?

A. Yes I remember that.

Q. Do you remember about how long those negotiations were on before that trade was finally closed?

A. Not a very great time, perhaps two weeks.

Q. Did you represent anybody in the consummation of that trade?

A. I examined the title for Mr. Classen, and told him what was necessary to obtain a perfect title.

Q. What did you tell him about the title that Ferdinand Bachelor held?

A. I told him that the Wheeler mortgage was assigned to Ferdinand Bachelor that the release of that should be procured, that a deed had also been put on record to Ferdinand Bachelor and that while I regarded the deed as of no validity since that was a prior recorded deed for the same tract, that it would be necessary to get a quit claim or warranty deed from Ferdinand Bachelor in order to make the title good.

Q. Did you explain to him about the mortgages? Whether they were good or not?

A. I told him that a release of that mortgage had to be obtained, as he desired to avoid any litigation.

Q. Did you tell him what you knew about the execution of these mortgages and this deed to Bachelor?

A. I told him nothing about that. I simply told him the mortgages were there and the deed was there and it was necessary to get a release of one and a conveyance of the other.

Q. You knew all these facts, when you were Mr. Classen's attorney?

A. I suppose so. I had been Mr. Murphy's attorney for six or seven years prior to that time and conducted the whole litigation for him.

Q. Now when this quit claim deed from Ferdinand Bach-
312 elor to Ewers White showed up in the abstract, did Mr. Classen ask you any questions about it?

A. It did not show up on the abstract till after I had approved the title. I gave him a printed slip of paper in which I stated the various requirements necessary to perfect that title, (1) A conveyance from Ewers White which should be a warranty deed.

(2) A quit claim or warranty deed from Ferdinand Bachelor to Ewers White.

(3) A release of this $2000.00 mortgage made to Wheeler and assigned to Bachelor in so far as said mortgage covered the hundred and twenty acres which Classen was buying.

(4) The payment of certain court costs and the dismissal of a suit which I think was then pending between Ewers White and Ferdinand Bachelor. My recollection is that suit had been filed, and either that suit was pending or else the suit of White against McMichaels was pending, and some costs was against one or the other that required the settling of costs. I also insisted that an attorney's fee of $500.00 due me from the parties, White and Murphy, should be taken care of.

Q. You knew at that time that Ferdinand Bachelor and Jim Wheeler were naked trustees at the time you advised Mr. Classen that the land would pass good title, did you not?

A. No I knew that Mr. Wheeler was a naked trustee as far as the mortgage was concerned, but I supposed that Mr. Bachelor had under some arrangement with Ransom settled with the Holt heirs, and that there was no conflict there.

Q. You testified further back that J. H. Wheeler was to assign that mortgage at the joint request of you and Mr. Ransom?

A. Yes after patent had issued.

Q. Did you and Mr. Ransom jointly request him to assign that mortgage to Mr. Bachelor?

A. Yes, a day or two after the patent had issued Mr. Ransom came down to me with a letter from the commissioner of the general land office advising him that patent had issued, and stating
313 to me that the mortgage should now be assigned to Ferdinand Bachelor in order to carry out our agreement, and a settlement made as soon as patent issued. I don't recollect now whether I wrote a note to Mr. Wheeler telling him that it would be all right to make the assignment according to the agreement. I wish to say right here that Mr. Wheeler had absolutely no knowledge of the negotiations between the parties, or what the use or object of this deal was but simply did it at my request and at Mr. Murphy's request as a friend of both of us. I was his attorney at the time and told him I wished to use his name as a mortgagee I did not tell him why, but told him that it was in furtherance of a settlement.

Q. He didn't ask any questions?

A. No he relied absolutely on my integrity in the matter.

Q. Who procured that quit claim deed from Ferdinand Bachelor?

A. I don't know. I examined the deed and passed on it.

Q. Who had it the first time you ever saw it?

A. It was either submitted to me by Mr. White or Mr. Classen for my approval?

Q. Did you talk with Mr. Ransom about it?

A. No I did not talk with Mr. Ransom about that part of the deal. I had nothing to do with it. Captain Stiles who represented Bachelor in that transaction told me that he could procure the deed and release from Bachelor and the amount for which he could procure it. I do not know the process by which he secured the same whether by direct communication with Mr. Bachelor or through Mr. Ransom. I know that Mr. Ransom was representing Bachelor in the real or threatened litigation between White and Bachelor

Q. Do you know how much money Mr. Classen was to pay for

this hundred and twenty acres of land part of the McMichaels-Holt land?

A. I did know exactly, but I have forgotten. It was somewhere between seven and eight thousand dollars. My recollection is that it was about $8000.00.

Q. Do you know to whom he paid that money?

A. I know what he paid it for. I can give you those amounts.

Q. All right give them as near as you can.

314 A. My understanding at the time was that White demanded $5500.00 and that $2500.00 went to White and $3000.00 went to Bachelor. It is also my recollection that White insisted that Mr. Classen assume and pay an obligation of $800.00 due Samuel Murphy. Mr. Classen also agreed to assume and did pay me $500.00 due me from Murphy and White.

Q. Was that all that was paid?

A. No there were some smaller items. Those are the principal large items that I remember.

Q. Making $65.00?

A. More than that $6900.00.

Q. Do you know what that $800.00 was paid to Samuel Murphy for?

A. My recollection is that when White bought from Murphy he owed him $800.00, on the purchase price, you see White bought a hundred and twenty acres of this land from Murphy, and there was a hundred acres of it that was not paid for at the time and that obligation of White to Murphy was assumed by Mr. Classen as part of the purchase price, and I understand was afterwards paid. I did not see any of this money pass except that $500.00 paid me. That is my recollection.

Q. Do you know whether it was paid in money or check?

A. I know nothing about that at all.

Q. You were not present when the money passed?

A. No it was paid in piece-meal as the amounts came in. Bachelor was a non-resident and these papers as far as he was concerned went back east and White's were executed back at McLoud. They were sent off and came in at different times; still the deal was consummated at about the same time. Because Mr. Classen didn't want a piece-meal title.

Q. And that is all you know about that transaction?

A. It is difficult to say that. There might be other details that you have not asked me about, but I don't know what they were. That is substantially the transaction.

Q. Have you any interest in that land now?

A. None whatever. I still represent Mr. Classen in certain litigations pending with the Classen Company and Samuel Murphy.

315 Q. Are you a member of the Classen Company?

A. No sir. I have no stock in the Classen Company. I say that with regret. I am sorry I have not.

This Wednesday morning Sept. 10th, 1902, the taking of the deposition in the above entitled cause is resumed.

J. H. EVEREST being recalled to the stand testifies as follows:

Q. In the purchase of this 120 acres of land in what is known as the Murphy-McMichael tract by Mr. Classen, did you see any of that purchase money paid, Mr. Everest?

A. I told you yesterday the only money I saw paid was the $500.00 paid me, being the attorney's fees as shown by Mr. Classen as part of the purchase price.

Q. Do you know who furnished the money to pay this Ransom claim that was secured by the $2000.00 mortgage executed by J. H. Wheeler?

A. Mr. Classen paid all the money that was paid. Whether it passed directly from him to Mr. Bachelor or whether White paid it after Mr. Classen had paid him, I don't know.

Q. Mr. Everest I will ask you to state how you know that Mr. Classen ever paid any money for that land except the $500.00 that he paid to you.

A. I was present when the agreement was made between Mr. White and Mr. Classen, and both Mr. White and Mr. Classen afterwards told me that the money had been paid.

Q. And that is all you know about the money being paid?

A. I didn't see it actually pass.

Q. All you know about it is what Mr. Classen and Mr. White told you?

A. And the fact that I examined the deed executed for the money paid.

Q. Did you ever see any of the money except the $500.00 paid to you?

A. I have already said that I had never seen any except the $500.00.

Q. And you don't know of your own knowledge that Mr. Classen ever paid a cent for it except the $500.00 paid to you?

A. No I don't know absolutely.

Q. Now in passing on this title of Mr. Classen's did you conceal any of the facts from him in reference to the title to that land?

316 A. There were no facts to conceal. I was given an abstract of title and asked to pass on the abstract. I examined the abstract, and gave a written opinion in which I set out the things necessary to be done in order to make a perfect title in my judgment.

Q. Did you tell Mr. Classen all the facts that you knew about that land at the time you made this purchase?

A. I told him nothing except to give him my written opinion.

Q. You never talked to him a word about it?

A. I may have done so. I considered the title absolutely perfect and knew of nothing to tell him which would in any way invalidate it.

Q. Then you were willing to give Mr. Classen any information that he might ask for in reference to that title?

A. That was what I was paid for, to pass on that title.

Q. If you didn't tell Mr. Classen all you knew about that land title, it was simply because Mr. Classen did not ask you for that information?

A. There was nothing to tell about it. We had an abstract and I passed on it from the abstract.

Q. Did the abstract show that Jim Wheeler was a trustee and that Ferdinand Bachelor was a trustee, and that neither one of them had any interest in the land?

A. The abstract showed that Mr. Wheeler at that time had absolutely no interest in the mortgage it having been assigned and the assignment recorded.

Q. What did it show about Ferdinand Bachelor?

A. The abstract showed that Ferdinand Bachelor claimed title to that land, and it also showed that he had no title because Mr. White had secured a title to the same tract and had recorded it first.

Q. Did you take the acknowledgment of the deed from Samuel Murphy to Mr. White?

A. I have no recollection. The deed will show.

Q. At the time you examined this title of Mr. Classen's, where the abstract showed that a mortgage had been made to Jim Wheeler for $2000.00 and a warranty deed to Ferdinand Bachelor for 120 acres of the land, you knew at the time that this mortgage and
317 this deed had both been made and executed by Samuel Murphy and Mr. White, to these parties as trustees?

A. No, I knew as far as Mr. Wheeler was concerned originally that he was simply acting as go-between. But when the mortgage was assigned to Bachelor, I supposed that Bachelor had become the owner of this mortgage, and that he had settled with the Holt heirs, if there was any settlement to make; and that he was in fact the real, *bona fide* holder of the mortgage and also whatever interest that deed might have given him.

Q. On what did you predicate that supposition?

A. On the facts concerning the transaction in my knowledge.

Q. What were those facts?

A. Mr. Ransom told me that the matter had been settled satisfactorily to the Holt heirs, and that Bachelor had made some arrangement that he was entitled to an assignment of the mortgage and the deed.

Q. That was all you knew about that?

A. Yes, that was all I knew about it.

Q. You knew that the deed that Samuel Murphy and his wife executed to Bachelor—you knew that Ferdinand Bachelor was a trustee of that transaction?

A. I did not know anything about that. I knew that a relinquishment of the rights of the Holt heirs was to be delivered in payment of that deed, but as to what the particular arrangements were between Mr. Bachelor and Mr. Ransom and the Holt heirs, I knew nothing.

Q. Do you know who furnished the money to pay for that deed?

A. I understand Mr. Ransom furnished part of it. Part of that

money was for legal services due Mr. Ransom, how much I don't know.

Q. I will ask you now who furnished the money to pay for that Ferdinand Bachelor deed?

A. I don't know whether Bachelor furnished it or whether Ransom furnished it or what arrangements were made.

Q. Or that Mr. Classen furnished it?

A. I am talking now about the deed made by Samuel Murphy to Ferdinand Bachelor and not about the deed made to Bachelor by White.

318 Q. At the time that Samuel Murphy executed that deed to Ferdinand Bachelor and that mortgage to Jim Wheeler, there was not a dollar passed from either Bachelor to Murphy or from Wheeler to Murphy, was there?

A. Not that I know of. My understanding is that the sole consideration for the execution of those papers was the dismissal of the Holt heirs' interest to that land. It was in pursuance of the compromise and agreement which I have detailed already, and that mortgage and that title was put up to secure Mr. Ransom and the Holt heirs in the payment of the sum of money that Samuel Murphy had agreed to give him to dismiss that contest or to file that waiver. And the object of giving the mortgage and making the deed, of course, was to secure the relinquishment of the Holt heirs, which was secured, approved by the department and accepted.

Q. I will ask you if Mr. Classen did not furnish the $3000.00 that was paid to Mr. Ransom as a consideration of filing that waiver at the time that Mr. Bachelor and Mr. White executed to Mr. Classen the title to the land, which finally placed the legal title in Mr. Classen.

A. No that is not the fact. Mr. Classen knew nothing about this transaction between Mr. Murphy and Mr. Ransom and Mr. Bachelor and Mr. Wheeler at the time it was made at all. And Mr. Classen only knew about this after he had submitted an abstract to me in 1899 and I had told him what instruments were necessary to be secured in order to perfect the title in Mr. White, from whom Mr. Classen purchased the land.

Q. Did you inform Mr. Classen about that transaction before or after he paid this $8000.00 you speak of?

A. I examined the abstract for Mr. Classen, and he accepted the title and paid out the money as far as I know.

Q. You were willing to give Mr. Classen all the information within your knowledge before he paid out this $8000.00 that you speak of if he had asked you for it?

A. I have told you several times that I was willing to give anybody any information in regard to that title that I knew at any time.

Q. Especially Mr. Classen?

319 A. I considered the issuance of patent as final and gave no advise to Mr. Classen back of the patent.

Q. But you were willing to answer any question or give any information?

A. I have already answered that several times saying that I was willing to inform them or anyone else.

Thursday morning Sept. 11th, at 9:30 o'clock A. M. the taking of depositions in the case of Amelia M. Holt *vs.* Samuel Murphy and A. H. Classen is resumed and J. H. EVEREST recalled to the stand.

Q. Now Mr. Everest you stated in your deposition that Mr. Classen assumed the payment of an attorney fee of $500.00 which he paid to you. From whom was that $500.00 attorney's fees due to you?

A. That fee was due from Mr. White and Mr. Murphy together. I had rendered services to Mr. Murphy for several years in the case; and when White bought the land, he told me that he would stand good for that fee and see that it was paid. And when Mr. Classen bought of Mr. White it was part of the agreement that Mr. Classen should assume and pay that $500.00, which he did by giving me his note, which was afterwards paid when due.

Q. Did Mr. White agree to pay you this $500.00 before he purchased the land from Mr. Murphy or after he purchased the land or at the time he made the trade with Mr. Murphy?

A. It was at the time and part of the consideration, as I understood it.

Q. Were you present when Mr. White filed his deed?

A. No sir.

Q. Where were you at the time Mr. Classen paid you that $500.00?

A. I don't have any idea. My book will show the date when it was paid and my bank account will show the deposits I was making.

Q. In what bank were you depositing?

A. In the Bank of Commerce.

Q. You don't know whether he gave you a check or paid you the money?

A. I don't recollect. It was either a check or the money, and I think it was a check.

320 Q. Did he pay you before or after the time you examined this abstract?

A. The note was given at about the time the abstract was examined, or shortly after, whenever my services were performed in that respect and he had obtained title to the land.

Q. And he gave you a note?

A. Yes sir. I forget the time the note ran. I know he offered to pay me or give me a note drawing ten per cent., and as I did not need the money and preferred interest, I took the note.

Q. Then at the time Mr. Classen bought this land, as you state, this $500.00 never did pass between you and Mr. Classen at that time?

A. No he gave me his obligation. He gave me his note.

Q. Did you keep any regular books in your office showing when notes were executed and when they are paid?

A. I keep a day book journal, which should show and undoubtedly does, the date when the note was received, also the date when it was paid. I don't keep any ledger. I keep a kind of a blotter, a day book journal.

Q. You have no independent recollection outside of your books of Mr. Classen's paying you that $500.00?

A. Yes, I have a positive recollection but I could not give you the exact date.

Q. You don't know whether it was paid in check or money?

A. No I am pretty sure it was a check. I don't remember of Mr. Classen's giving me money in any of our transactions.

Q. The time he closed up this deal between Ewers White and Bachelor and those fellows, you didn't handle any of the money in that payment did you?

A. No sir, nor did not see it paid.

Q. In Mr. Classen's testimony where he said that he left all that matter to you and that you divided that money and attended to it for him, he was mistaken?

A. He did not say that, as I understand it.

Q. If he did say it, he is mistaken?

A. If I remember his testimony, he stated that Captain Stiles acted as a go-between in settling the Bachelor matter, and that he settled with Mr. Stiles.

321 *A*. Is that your recollection?

A. And I inserted this proposition that I paid out none of the money for Mr. Classen acquiring this title, but simply passed upon the title from the abstract, and gave him a written statement of the requirements necessary to perfect the title, and examined and passed on the deeds, releases, etc. necessary to perfect the title.

Q. Do you know where that written opinion is now?

A. I delivered it to Mr. Classen with the abstract. I have no means of knowing what became of it afterwards.

Q. Did you write this on the abstract or on a seperate piece of paper?

A. My custom is to typewrite or dictate the requirements for the perfecting of titles on a separate piece of paper. When I finally approve and certify the title, I generally do that on a sheet of paper attached to the abstract. I, therefore, believe that in this particular instance I gave my first opinion on a separate, because that is my invariable custom. I believe in giving my testimony heretofore I stated that Mr. Classen assumed some sort of an obligation to Sam Murphy, which I estimated at about $800.00. Since thinking that matter over, all I knew about that was from a preliminary talk with the parties, and I really had no personal knowledge of whether that was part of the transaction or not; but either Murphy owed Classen already or a payment was agreed to be made of some kind. Mr. Murphy will probably remember about that more distinctly. The items that I have the most distinct recollection being agreed upon were the items coming to myself of $500 and the items going to Mr. White of $2500. and the money demanded by Mr. Bachelor through Mr. Stiles for a settlement of his claim amounting to about $3000. But as I have said before, I didn't see that consideration actually pass, and only know about the $500. personally.

Q. I will ask you Mr. Everest if it is not a fact that Samuel Murphy and Mr. Classen at the settlement, that they did not estimate that Mr. Classen's quarter was worth $800 more than Sam's quarter of that claim?

A. I don't understand that question. Mr. Classen purchased 120 acres from White and bought nothing of Murphy at all. If there was any estimate or consideration, I heard nothing of it. I don't know anything about it.

322 Q. If there was a dollar of money passed in any way when this trade was consummated between Mr. Classen, Mr. White and Mr. Murphy and Mr. Bachelor, you didn't see it did you?

A. No, I didn't see that money actually paid.

Q. Not a dollar?

A. Not a dollar, except as I have stated, to myself, which was a debt due from these other parties to me, which Mr. Classen assumed and took up by his note and paid.

Q. When Mr. Classen testified in the case of McMichaels *vs.* Murphy that he paid you $500 for passing on that title for him, he was mistaken?

A. That $500 included all the services that were performed for him, and also included the *pi*ror services rendered to the other parties.

Q. If he made such a statement in his testimony, he was mistaken?

A. No he would not be entirely mistaken. That $500 was in part for the examination of the title. When they come to the trade and agreed to assume and pay this $500, he asked me if that would include also my services for examining and passing on the title for him. I told him yes that would be all right. I would carry the transaction through to that extent.

Q. Then in order for Mr. Classen to tell the whole truth in that transaction, he would have to make the statement you have made here?

A. You will have to let some other person judge as to that. I only give my best recollection of matters that occurred three or four years ago.

It is here agreed by and between Plaintiff and Defendant- that the taking of these depositions be discontinued until 9 o'clock Saturday morning, Sept. 13th, 1902, at which time the taking of depositions will be resumed, and both parties agree that no objections shall be raised by reason of said adjournment.

J. H. EVEREST.

"Deposition of witness taken to be used in an action pending in the District Court within and for the County of Oklahoma in the

323 Territory of Oklahoma, wherein Amelia M. Holt is plaintiff, and Samuel Murphy and A. H. Classen are defendants, in pursuance of the notice hereto attached and at the time and place therein stated.

The said plaintiff appeared by her attorney J. S. Jenkins and the said defendants appeared by their attorney J. H. Everest and thereupon the said Amelia M. Holt produced the following witness to-wit:

AMELIA M. HOLT of lawful age, being first duly sworn, deposeth and saith:—

Q. State your name, age and residence.
A. Amelia M. Holt, 51 in July, Lansingburgh.
Q. Do you know Samuel Murphy?
A. No sir.
Q. Do you know A. H. Classen?
A. No sir.
Q. Do you know Ferdinand Batchelder?
A. No sir.
Q. Do you know Ewers White?
A. No sir.
Q. Do you know J. H. Everest?
A. Introduced to him today and not personally acquainted with him.
"Z." Q. Do you know C. W. Ransom?
A. Yes sir.
Q. Did you know Levi Holt during your life time?
A. Yes sir, he was my husband.
Q. Is he living or dead.
A. Dead.
Q. When did he die?
A. Nine years ago last May on the 19th day of May.
Q. When were you and Levi Holt married?
A. 18th day of December, 1881: here witness offers to attach her marriage certificate and make it a part of her deposition, and
324 defendants' attorney after inspecting said certificate admits that it is all right and waives the attaching of said certificate.
Q. Do you know whether or not Levi Holt in his lifetime had filed a soldier's declaratory — or taken some other step towards filing on homestead in the territory of Oklahoma and near Oklahoma City?
A. He hae C. W. Ransom file one for him so he told me.
Q. Do you know the discription of the land on which this filing was made?
A. Only what he told me that it was near the City?
Q. You never have resided in Oklahoma yourself?
A. No sir.
Q. Have you ever had any correspondence with C. W. Ransom with reference to the land in controversy?
A. Yes sir.
Q. Here plaintiff's attorney hands witness a letter. I *have* ask you to examine this letter and tell us if you can from whom you received this letter?
A. Charley Ransom.

Q. Plaintiff's Attorney presented said letter to the Notary Public and asks that it be marked exhibit "A" and made a part of this deposition.

Q. Plaintiff's attorney presents to the witness a letter dated Nov. 3, 1894, and signed "with love to all, Charley" I'll ask you to examine that letter. Have you seen that letter before?

A. Yes sir.
Q. Where did you get that letter?
A. I received it in Ellenburg, N. Y.
Q. How did you receive it?
A. Through the mail.
Q. Who did you receive it from?
A. Charley Ransom.
Q. Is that his signature to that letter?
A. It is to the best of my knowledge.

Here Plaintiff's Attorney hands said Letter to the Notary Public and asks that said letter be marked exhibit "B" and made a part of this deposition.

325 Here Plaintiff's Attorney hands to the witness another letter in Typewriting with the following words written across the top of the letter with a pen "Take good care of this letter or burn it up." Dated Oklahoma City, O. T. Feb. 26, 1894, and signed "Very truly Charley."

Q. I'll ask you to examine this letter and state if you have ever seen it?
A. Yes sir.
Q. I see that this letter is directed to Amelia did you ever receive that letter from any person?
A. From Charley Ransom.
Q. How did you receive that letter?
A. Through the mail.

Here Plaintiff's attorney hands said letter to the Notary Public and asks that it be Marked exhibit "C" and made a part of this deposition.

Q. The last letter I handed you was dated the 26th day of Feb. 1894, have you received any other letters from C. W. Ransom since that date?
A. No sir, not that I can remember of.
Q. I'll ask you after your husband's death if you employed any one to represent your interests in the litigation with reference to the land in Oklahoma as above stated?
A. Charley Ransom.
Q. Do you know what the initials of Charley Ransom are?
A. C. W. Ransom.
Q. Did C. W. Ransom ever notify you at any time either by letter or otherwise that the litigation with reference to the land above stated had been closed before the interior department and that you had gained the land or that the heirs of Levi Holt had gained the land?
A. No sir.
Q. Did C. W. Ransom ever notify you that the heirs of Levi Holt had gained the land above stated and that it was necessary for you to come to Oklahoma in person and settle on said land and make your filing on said land in accordance with law?
A. No sir.

Q. Were you ever notified by any person that this liti-
326 gation with reference to the land above stated had been decided in your favor?

A. No sir not until last August, a year ago last August Mr. Jenkins notified me.

Q. Did you receive any communication from C. W. Ransom during the early part of the year 1897, notifying you that you had recovered in the land department of the United States the southwest one fourth of section 27 Township 12 north Range 3 west I. M. at the same time request you to come to Oklahoma and make settlement on said land and file the necessary papers in the land office to procure patent to said land?

A. No sir.

Q. Did you ever write a letter to C. W. Ransom stating to him that you was in the boarding-house business and doing well and that you could not afford to quit your business and go to Oklahoma, and settle on the land above described, or words to that effect.

A. No sir.

Q. State whether or not you are ready and willing at any time to go to Oklahoma and reside on the land above described and do acts that was necessary to procure a patent to said land in case the government should award the land to the heirs of Levi Holt?

A. Yes sir.

Q. In notice on June the 14th 1897 C. W. Ransom filed a paper in the local land office at Oklahoma City in which he purported to waive the right of the heirs of Levi Holt to make homestead entry on the land above described for the consideration of Two Thousand dollars in hand paid to the heirs of Levi Holt by one Samuel Murphy, do you know anything about the execution and filing of this said instrument?

A. No sir.

Q. Did you ever authorize C. W. Ransom or J. H. Everest or any other person to file a waiver of the rights of the heirs of Levi Holt to the land above described?

A. No sir.

Q. When did you first learn that a waiver of the rights of the heirs of Levi Holt to the above described — had been filed in the local land office at Oklahoma City?

327 A. A year ago last fall, I mean in the fall of 1901 I heard of it.

Q. Did you ever receive the Two Thousand Dollars mentioned in said waiver as having been paid by Samuel Murphy to the heirs of Levi Holt?

A. No sir not one penny.

Q. What estate did Levi Holt leave when he died?

A. There was a farm there but it was mortgaged to Mr. Humphrey and it was sold and under mortgage, I did'nt receive any money from it at all.

Q. What other property if any was there belonging to said estate?

A. Very little personal property, and that was sold to pay the outside debts and funeral expenses.

Q. After paying the outside debts and funeral expenses, was there anything left?

—. No sir.

Q. Did you have enough to pay the outside debts and funeral expenses?

A. No sir not all paid yet.

Q. Was there any administration on the estate of Levi Holt?

A. Not really as the girls signed over the paper to prevent the expenses.

Here plaintiff's attorney hands to the witness a paper, is that the paper you refer to in which you say the girls signed over to you to try to help you save something?

A. Yes sir, here paper is read to the Notary Public, We the undersigned children and heirs at law of the late Levi Holt of the town of Ellenburg County of Clinton and State of New York do hereby release and waive any claim we may have as such heirs to the estate of said Levi Holt or any portion thereof, and we hereby assign, transfer and set over any and all claims which we may have to such estate, to Mrs. Amelia Holt widow of said Levi. We do this in consideration of the smallness of said estate and to save the expense of administration believing that said estate should be used for the support and maintenance of said widow and the minor heirs of said Holt.

Dated December 1893.

MISTRESS IDA A. RANSOM, Dec. 26.
MISTRESS MINERVA MANLEY, Jan. 2.
MISS SUSIE J. HOLT, Jan. 10, 1894.

328 I hereby waive and release all claim to the estate of the late Levi Holt within the County of Clinton and State of New York and transfer all my interest in same estate to Amelia Holt, Edith L. Ransom January 15, 1894. Here plaintiff's attorney hands said instrument to the Notary Public and asked that it be marked exhibit "D" and made a part of this deposition.

Q. Give the names of all the children of Levi Holt?

A. George Holt, Minerva Manley, Ida Ransom, Lee Holt, Susan J. Holt, Edith Ransom, Earnest C. Holt, Nellie May Holt. Here plaintiff rests.

Cross-examination by J. H. EVEREST attorney for defend.:

Q. What is your present address Street and number?

A. Lansingburg, 8th Street and Third Ave. #333.

Q. How long have you been living at that address?

A. Since 4th of September, 1902.

Q. Have you been engaged in any business since the death of Levi Holt in 1893?

A. I kept a few boarders a few weeks.

Q. That is all you have been doing since then?

A. Yes sir.

Q. Do you know how many soldiers' declaritory statements your late husband Levi Holt filed for a land in Oklahoma?

A. No sir I do not.

Q. Have you any personal knowledge concerning the filing of the soldiers declarito-y Statement by Levi Holt through C. W. Ransom his agent for the south-west quarter of section 27 Township 12 N. of Range 3 west in the Indian Meridan in Oklahoma County Territory of Oklahoma?

A. Only what Mr. Holt told me.

Q. You don't know personally what particular tract of land this declaritory statement was filed upon.

A. Not personally.

Q. Well you never did know the exact quarter section, Township and Range did you?

329 A. Only what they told me.

Q. Who told you?

A. Mr. Holt told me of what Ransom wrote him and then Mr. Jenkins told me.

Q. Mr. Holt never gave you any particular information as to the quarter section, Township and range did he?

A. Not that I know of.

Q. You have identified or produced three letters in your examination in chief marked respectively exhibits A, B, and C. Is this all the correspondence that you have had with Mr. C. W. Ransom about the land which you are now claiming in this suit?

A. That is all that I remember of.

Q. Did you ever write him in regard to this case referred to in his letters?

A. Yes.

Q. You mean in answer to these letters?

A. Yes sir.

Q. Did you write the letters yourself and sign them yourself?

A. I had my daughter write them.

Q. As a matter of fact you don't write or sign any of your correspondence yourself and haven't for some years?

A. No.

Q. Your daughter Julia conducted this correspondence for you did she?

A. Yes.

Q. You never wrote any letters or had any written to Mr. C. W. Ransom after you answered this letter of Nov. 3, 1894, did you?

A. No.

Q. And you never paid any further attention to the law suit or contest mentioned in these letters after you answered the letter of November 3, 1894 until the fall of 1901 when you received a letter from J. S. Jenkins your attorney in this suit, is that correct?

A. That is correct, that I depended on Ransom to see about the case and notify me about it, then he wrote me not to write to anybody else about the case without consulting with him.

330 Q. Well that is this letter of Nov. 2, 1894, marked Exhibit "A."

A. In one of those three letters to the best of my knowledge.
Q. And you didn't write to consult him about the case after your answer to his letter of Nov. 3, 1894, did you?
A. No.
Q. What money did you ever expend in that litigation before the interior department over this land.

(Objected to as immaterial.)

A. I don't know of any.
Q. What Attorney's fees if any did you pay Mr. Ransom or anyone else in connection with this litigation?

(Objected to as immaterial.)

A. I didn't pay Ransom any nor anyone else any.
Q. Up to the time that you commenced this suit in the district Court of Oklahoma County, O. T. you have never invested a dollar in that litigation in any way?

(Objected to as immaterial.)

A. No sir.
Q. Had Levi Holt your late husband ever paid out any money in connection with that litigation?
A. That I can't say.
Q. You don't know of any do you?
A. No.
Q. Did you ever live on improve or cultivate the south west quarter of section 27, Township 12 N. Range 3 West I. M.
A. No.
Q. How many suits have you brought in the district Court of Oklahoma County?
A. This is the only one that I know of.
Q. You may state whether or not you ever authorized J. S. Jenkins your attorney in this suit to bring any other suit in the District Court of Oklahoma?

(Objected to as immaterial) and not cross examination.

A. Well only that I could get my money back if the suit is decided in my favor and for my damages keeping me from the property all these years.
Q. Well that was a suit against Ransom to get back the money that he had collected was it.
A. Yes against Ransom and these fellows that are on the
331 land for damages keeping me from my property.
Q. Have you ever furnished or paid out any money in the prosecution of this present suit?
A. I had a man out there to furnish the money.
Q. You refer to C. M. Campbell of Ardmore, I. T. Do you?
A. Yes.
Q. Do you know Mr. Campbell?
A. No sir.
Q. How did you come to write to Mr. Campbell?

(Objected to as not cross examination.)

A. Well, Mr. Jenkins told me that he was ready to furnish the money for me if I would write him.

Q. You refer to J. S. Jenkins your atty.?

A. Yes sir.

Q. Have you any contract with Mr. Campbell with regard to furnishing this money?

A. No contract.

Q. How is Mr. Campbell to get his money back?

A. If I won the suit I was to pay him out of the property if not I was to do the best I can to pay him.

Q. What part of the property were you to give him if you won the suit?

A. I was to pay him in money of course out of the property.

Q. What agreement have you with J. S. Jenkins as to his fee?

(Objected to as immaterial.)

A. I am to give him half.

Q. Was he to pay the expenses of the suit and do the Attorney's work for half the land?

A. Yes sir.

Q. When did you make that arrangement with J. S. Jenkins was it before or after you filed this suit in the district court?

A. After.

Q. You have never put a single dollar of your own money into this present litigation but Judge J. S. Jenkins and a man unknown to you whose name was furnished to you by Mr. Jenkins, C.
332 M. Campbell have done the work and paid the money?

A. Yes.

Q. Is your contract with Judge J. S. Jenkins in writing?

A. Yes sir.

Q. Have you a copy of that contract or the original contract?

A. I am not positive.

Q. Who did you give that to after you signed it?

A. Mr. Jenkins.

Q. Well as a matter of fact then you have only a half interest left in this land having deeded away a half interest to J. S. Jenkins?

A. Yes.

Re-examination by J. S. JENKINS:

Q. To refresh your mind I will ask you if you wrote a letter to me some three or four months ago asking me to file a suit against C. W. Ransom and the other parties who had been defrauding you out of your land for damages against them?

A. Yes sir I did.

Q. To further refresh your mind I will ask you if a contract in writing which you executed to me to secure my attorney fee was reduced to writing and signed and acknowledged in this office, and that instrument will show the correct date of the contract, and whether it was before suit was filed or after suit was filed?

A. It will, and it was in this building.

Q. I will ask you if before the execution of that contract you asked me whether I could furnish the money to carry on the litigation, and I told you that I could not, but that if you would write to a friend of mine by the name of C. M. Campbell I believed he would loan you the money to carry on your litigation?

A. That's correct.

Q. State that conversation as near as you can recollect between you and me in reference to the money to carry on your litigation?

A. That I ask- Mr. Jenkins to see if he could furnish the money and he said he could not but he knew of a man there that had lots of money a friend of his and he gave me his name and I wrote
333 him about the money and then he wrote that it was al- right.

Q. Mrs. Holt have you got that letter with you that you received from Mr. Campbell?

A. No, I have not with me I wasn't thinking of such a thing.

Q. Now, in reference to your not writing to Mr. Ransom from Nov. 1894 I'll ask you whether or not in not writing to anyone else there you are following the instructions of Mr. Ransom?

A. Yes sir.

Q. This suit had been pending for four or five years previous to that time had it?

A. Yes sir to the best of my knowledge.

Q. State whether or not you relied on Mr. Ransom to transact this business for you and that during all this litigation you only answered the letters that Mr. Ransom wrote to you concerning the land?

A. Yes sir, I did trust to him and thought that he would do all right.

AMELIA M. HOLT.

I, Thomas Galvin a Notary Public in and for the State of New York, County of Rensselaer do hereby certify that the above named Amelia M. Holt the witness whose name is subscribed to the foregoing deposition was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the case aforesaid and that the deposition by her subscribed was reduced to writing and subscribed by the witness in my presence and the same were taken on the 8th day of Oct. A. D. 1902, between the hours of 8 o'clock a. m. and 6 o'clock p. m. of said day and at the office of the County Clerk in the town of Troy in the County of Rensselaer and State of New York as specified in the notice thereto attached, and that I am not attorney for either of said parties or otherwise interested in the event of said action.

[SEAL.]

THOMAS GALVIN,
Notary Public.

334 Depositions of witnesses, taken to be used in an action pending in the District Court within and for Oklahoma County in the Territory of Oklahoma, wherein Amelia M. Holt, is plaintiff, and Samuel Murphy and A. H. Classen are defendants.

In pursuance of the notice hereto attached and at the time and place therein stated the said Amelia M. Holt, plaintiff appeared by her attorney J. S. Jenkins, and the said defendants appeared not, and thereupon the said plaintiff produced the following witness to-wit:

G. W. BATCHELDER: of lawful age, being first duly sworn deposeth and saith:

"W." Q. State your name, age and residence?
A. G. W. Batchelder, Weston, Miss. 61.
Q. Do you know Amelia M. Holt?
A. I do not.
Q. Do you know Samuel Murphy?
A. I do.
Q. Do you know A. H. Classen?
A. I do.
Q. Do you know Ewers White?
A. No, sir. I do not.
Q. Do you know C. W. Ransom?
A. I do.
Q. Do you know J. H. Wheeler?
A. I do.
Q. Do you know Ferdinand Batchelder?
A. I do.
Q. What relation is he to you?
A. He is my son.
Q. Where does he reside at this time?
—. ——.

335 Q. These parties that you have stated that you know, how long have you known them, except your son?
A. I have known Mr. Ransom, and Mr. Wheeler and Mr. Murphy I would say nine years, Mr. Classen I can't tell, about the time he took the office, at the Okla. Land Office.
Q. Do you know the S. W. ¼ of Sec. 27 Twp. 12 of Range 3 West I. M. situate near Oklahoma City, and known as the Murphy-McMichael claim?
A. I know where it is, but I have never been on it.
Q. Were you present in Oklahoma City, on or about the 14th day of June 1897, at the time that Samuel Murphy made Final Proof on the land above described?
A. I can't remember that I was.
Q. Do you remember the circumstances of Samuel Murphy making final proof on that claim?
A. I do not.
Q. Where was Ferdinand Batchelder on or about the date above mentioned?
A. He was in Boston, or his home at Weston.

Q. Do you know anything with reference to Samuel Murphy and his wife conveying to Ferdinand Batchelder the N. ½ and S. W. ¼ of the tract of land above described, said deed, being dated on the 27th day of July 1897, and the consideration being Two Thousand Dollars?

A. Well, I can't just remember about that, either the amount or about the deed.

Q. Do you know anything about the circumstances of that conveyance?

A. I can't remember it, but if you will let me state what I do know about it, I will do so.

Q. I will ask you to state what you know about the conveyance from Samuel Murphy and his wife to Ferdinand Batchelder, dated the 27th day of July 1897.

A. I don't remember or know anything about the dates, nor do I remember who were the signers of the deed. I remember that there was a deed for I think, fifteen hundred dollars, I would not be sure about the amount, and that deed was made to my son.

336 Q. Was your son present?

A. No sir.

Q. Was Mr. Ransom present?

A. Mr. Ransom gave me the deed.

Q. Was J. H. Everest present?

A. No sir.

Q. Who else was present?

A. I do not think there was any one else present.

Q. Where were you at that time?

A. At Oklahoma City, if I remember right.

Q. Was that on or about the time the deed was executed?

A. I could not say, I do not remember. I knew but very little of the transaction.

Q. Did you on or about that time, pay to Samuel Murphy, fifteen hundred dollars in money, or any other amount of money, either directly or indirectly, as a consideration for making the conveyance of this 120 acres of land above described, to your son, Ferdinand Batchelder?

A. No sir, I never had any conversation with Mr. Murphy anything concerning this affair.

Q. Do you know why, Samuel Murphy made that conveyance of 120 acres of the land above described to your son Ferdinand Batchelder on the 27th day of July, 1897?

A. I don't know anything about Samuel Murphy in this transaction. Mr. Ransom gave me a deed, the amount of which was I think fifteen hundred—I do not remember the exact amount, and that the consideration to Mr. Ransom——

By COUNSEL: I am not not asking you about the consideration paid Mr. Ransom?

Q. Do you know anything about Samuel Murphy and his wife executing to J. H. Wheeler a mortgage for two thousand Dollars,

on the 160 acres above described, said mortgage being dated the 18th day of June 1897?

A. I don't remember anything about it.

Q. Do you know anything about J. H. Wheeler transferring this $2000.00 mortgage and note to Ferdinand Batchelder?

337

A. I don't know anything about it.

Q. Do you know anything about C. W. Ransom filing a waiver of the rights of the heirs of Levi Holt, to perfect their entry on the S. W. ¼ of Section 27, Twp. 12, N. Range 3 W. I. M., on the 14th day of June 1897, said waiver being made, in consideration of the receipt of two thousand dollars, to them in hand paid, by Samuel Murphy, and filed in the local land office at Oklahoma City, on the date above mentioned?

A. I don't know anything about it whatever.

Q. Do you know where Ferdinand Batchelder was on or about the 12th day of May 1899?

A. I don't know where he was.

Q. Where were you on or about that date?

A. I certainly could not say, where I was, at that time I was engaged in mining and traveling all the time.

Q. Do you know anything about your son Ferdinand Batchelder conveying to A. H. Classen the north one half of the S. W. ¼, and S. W. ¼ of the W. ¼ of Section 27, Twp. 12 N. Range 3 W. I. M. Being the same land which was conveyed to your son by Samuel Murphy and wife as above stated?

A. All I know about it is, or remember about it is, Mr. Ransom told me that he had received the deed from my son.

Q. That is all you know about this deed from Ferdinand Batchelder conveying said land to Classen?

A. I do not know whether the deed was made to Mr. Ransom or to Mr. Classen.

Q. Where were you when Mr. Ransom informed you that he had received that deed?

A. It would be impossible for me to state. It might have been at my house or at Perry. We met often and had large business transactions together.

Q. Were you not at Oklahoma City, on or about the 13th day of May 1899, in company with J. H. Everest, C. W. Ransom, and D. F. Stiles, and that you remained there some two or three days, and at various times and places during that time, and in the presence of these gentlemen you discussed the sale of this land by your son to A. H. Classen and that A. H. Classen then and there paid to you $3000 in money as the consideration for your having made this deed from your son, conveying this to A. H. Classen, or some one whose name he suggested?

338

A. No, I never had any conversation with Mr. Classen about this transaction, and I never received any money from him.

Q. On or about the time that Mr. Classen was closing up this deal for this land which I have described, was Captain Stiles present with you and any one else, engaged in closing up this trade with Mr. Clas-

sen, in which Captain Stiles was representing either you or your son, and Mr. Classen through his attorney J. H. Everest or any one else paid to Captain Stiles $3000 or any other amount of money for that conveyance

A. I haven't the slightest knowledge of any such transaction.

Q. On or about the same date, the 13th day of May 1899, did A. H. Classen or his attorney J. H. Everest, either directly or indirectly pay to you for your son Ferdinand Bachelder, the sum of two Thousand Dollars, in payment of Two Thousand Dollar mortgage which was transferred by J. H. Wheeler to your son Ferdinand Bachelder?

A. No sir.

Q. Did you ever receive any amount of money from A. H. Classen or any amount of money from his attorney J. H. Everest at any time or place in consideration of your son Ferdinand Bachelder conveying the 120 acres of land above described to A. H. Classen or Ewers White or any other person.

A. I never received a dollar in money from either of them.

Q. If J. H. Everest or A. H. Classen or both of them or either of them stated that they paid to you Five Thousand Dollars or Three Thousand Dollars or any other amount of money, as agent for Ferdinand Batchelder, the same being in consideration of conveying the title of this land to A. H. Classen directly or indirectly, then they were mistaken, about the fact of paying you the money?

A. No, they never paid me any money, that I can remember, and I would remember it if they had.

Q. In handling large sums of money like that you would
339 make a record of it through a bank, so that you could testify positively as to the transaction?

A. Most likely.

Q. Do you know of your own knowledge whether J. H. Everest or A. H. Classen, or any other person f-r A. H. Classen, paid to Ferdinand Batchelder the sum of fifteen hundred Dollars, or three thousand dollars, or five thousand dollars, or any other amount of money, as a consideration for the conveyance of the 120 acres of land above described to Ewers White or A. H. Classen, or to any other person, *with* whom A. H. Classen might suggest?

A. No sir, I could almost positively state that he never did.

Q. Were you familiar with your son's business on or about the 13th day of May, 1899?

A. Practically,—I knew something about his business.

Q. Were you his agent for the transaction of his business in the Territory here at that time?

A. Yes, Practically I was, I took care of his business here.

Q. Give both Post Office and office address of your son.

A. His P. O. Address is No. 4 Post Office Square, Boston, Mass. care U. S. Mining Company. Residence address is Weston, Mass.

G. W. BATCHELDER.

Subscribed and sworn to before me this 27th day of September 1900.

——— ———.

In the case of Amelia M. Holt *vs.* Samuel Murphy and A. H. Classen the taking of depositions according to agreement made on adjournment on the 11th day of Sept., 1902, is resumed on this the 18th day of Sept., 1902, at 9:30 o'clock A. M. and SAMUEL MURPHY being produced as a witness and sworn to tell the truth the whole truth and nothing but the truth testifies as follows:

Q. State your name age and residence?
A. My name is Samuel Murphy, age 57, residence Oklahoma City, Okla.
Q. Are you one of the defendant- in the case of Amelia M. Holt *vs.* Samuel Murphy and A. H. Classen?
340 A. Yes sir.
Q. Do you know A. H. Classen?
A. I do.
Q. Do you know C. W. Ransom?
A. I do.
Q. Do you know J. H. Everest?
A. Yes sir.
Q. Do you know Ferdinand Bachelor?
A. Is he the old one or the young one? I know two Bachelors, the old man and his son I think they are.
Q. Do you know what the old man's name is?
A. I don't remember.
Q. About what age was the young man?
A. If I remember correctly, he was about 30 years old.
Q. Were you well acquainted with him?
A. No I don't know that I would know him.
Q. Do you know whether his name was Ferdinand Bachelor or not?
A. No I don't.
Q. Do you know Ewers White?
A. I do.
Q. Do you know another man here by the name of Samuel Murphy besides yourself?
A. I have a nephew here by the name of Samuel Murphy.
Q. How long has he been living here?
A. I would say about two years.
Q. He had no connection with this law suit?
A. None whatever, no sir.
Q. Do you know a piece of land adjoining Oklahoma City on the northeast known as the south-west quarter of Section 27, Township 12 north, Range 3, West, I. M.?
A. Yes sir.
Q. How long have you known that piece of land?
A. I have known it for about 13 years.
341 Q. Do you know who got the first filing on that piece of land from the government?
A. Ewers White, I think.
Q. And Ewers White afterwards relinquished that filing?
A. Yes sir.

Q. And on the same day you filed on the land?
A. I did.
Q. After your filing, state whether or not Levi Holt and W. T. McMichael contested your filing.
A. McMichael did.
Q. Do you recollect whether Levi Holt did or not?
A. I never knew anything about it until Secretary Smith made a ruling. It never appeared in any contest — I have been.
Q. There was a ruling in which this land was awarded the heirs of Levi Holt, was there not?

Objected to as calling for secondary evidence.

A. I never saw the Secretary's ruling. I understand Secretary Smith ruled in favor of the Holts.
Q. You finally proved up on that land?
A. I did.
Q. Do you remember the date you made your final proof?
A. No I don't remember now. I can approximate it.
Q. I will ask you whether or not you made your final proof on or about the 20th day of May 1897?
A. I think that is about the date as well as I remember.
Q. You made that final proof in the local land office at Oklahoma City?
A. Yes sir.
Q. Do you remember who was present when that final proof was made?
A. My recollection is that it was made before D. M. Dilley.
Q. Who was present on that occasion besides Mr. Dilley?
A. Mr. Everest and Mr. Geary and two or three men I took as witnesses.
Q. Was Mr. Classen Receiver of the land office at that time?
A. I think he was.
342 Q. Was Mr. Classen present at that time?
A. I don't remember whether Mr. Classen was present or not.
Q. Did you ever have any talk with Mr. Classen with reference to proving up before you proved up?
A. I certainly did not.
Q. Was C. W. Ransom present?
A. I don't think he was.
Q. Did you see Mr. Ransom a short time before you proved up, say two or three days?
A. I did not.
Q. Did you see Mr. Ransom on or about the 14th day of June 1897?
A. Mr. Ransom was here some time after I proved up. I don't remember that I saw him. I understood that he was here.
Q. To refresh your memory I will read a little document to you and see if you remember of Mr. Ransom's being present and delivering to you or to the officers of the land office in your presence the following instrument.

"U. S. LAND OFFICE, OKLAHOMA, O. T., *June* 14, 1897.

In the Matter of the Preference Right of the Heirs of Levi Holt, Deceased, to Enter the South-west Quarter of Section 27, Township 12 North, Range 3 West, I. M.

Waiver of Right of Entry.

Comes now the heirs of Levi Holt, deceased, by their attorney of record, C. W. Ransom, and hereby waives the right to perfect the right of the said heirs to make homestead entry of the south-west quarter of Section 27, Township 12 North of Range 3 West I. M., said right to make entry being accorded said heirs by the honorable Secretary of the Interior Department in the case of the heirs of Levi Holt *vs.* Samuel Murphy, and ask on behalf of said heirs to withdraw all claim to said tract of land, this instrument being in consideration of the receipt of $2000.00 to them in hand paid by the said Samuel Murphy.

(Signed) C. W. RANSOM.

Subscribed and acknowledged before me this 14th day of June, 1897.

D. M. DILLEY, *Register.*"

343 Did you ever see that document before it was filed in the land-office Mr. Murphy?

A. I don't think I did myself. I submitted it to my attorney. If I was there I don't remember it now.

Q. Who was your attorney?

A. J. H. Everest.

Q. Did you ever have any talk with Mr. Ransom about executing this waiver before that time?

A. I never did.

Q. Did you ever have any talk with Mr. Ransom since that time?

A. I don't think I have.

Q. Now this instrument acknowledges receipt of $2000.00 paid the heirs of Levi Holt, did you furnish that $2000.00 to purchase this waiver?

A. I executed to him a mortgage and perhaps a note, I don't remember on 120 acres of land.

Q. You executed the note and mortgage to whom?

A. That was every bit submitted to him.

Q. To whom?

A. J. H. Everest.

Q. Now in reference to this $2000.00 that this waiver acknowledged receipt of, did you pay Mr. Ransom or the heirs of Levi Holt $2000.00 in money on that occasion?

A. I did not.

Q. Now as I understand you on that occasion you executed a note and mortgage for $2000.00 for the use and benefit of the heirs of Levi Holt?

A. That is the way I understood it.

Q. Now can you remember to whom you executed that mortgage?

A. I told Mr. Everest to make the best compromise possible with the Holt heirs for me. Anything he did I was satisfied with. Whatever he did I signed it with the understanding that I was settling with the Holt heirs.

Q. With the Holt heirs?

344 A. I certainly thought so. I didn't do anything else.

Q. Now to refresh your memory Mr. Murphy I will ask you if this $2000.00 note and mortgage was not executed to J. H. Wheeler in trust for the Holt heirs.

A. There was one paper executed to J. H. Wheeler, probably that was the one. I remember that Wheeler's name was to one of the papers that he executed.

Q. Now if I understand you Mr. Murphy, this $2000.00 mentioned in this receipt was paid by you by the execution of a mortgage to some one whom you remember to be J. H. Wheeler in trust for the heirs of Levi Holt.

A. I certainly understood that Holt—of course that representation must have been made to me. I don't know that that was Mr. Ransom's object in having it executed or not.

Q. Mr. Everest did all the talking to Mr. Ransom?

A. I did not.

Q. You were on very good terms with Mr. Ransom at that time?

A. No I was not.

Q. And whatever arrangements were made by these notes was left entirely to Mr. Everest?

A. Yes sir.

Q. I notice in the records that on or about the 27th day of July 1897 you conveyed the north half and the south-west quarter of Section 27, Township 12 North, Range 3 west to one Ferdinand Bachelor of Noble County for the consideration of $2000.00. Now did Ferdinand Bachelor pay you $2000.00 for that land?

A. No sir. I — when I conveyed that. Of course I did that like I did the other, consulted Mr. Everest. I never saw Bachelor.

Q. You never saw Bachelor or had any talk with him?

A. No sir.

Q. You never received a cent of money from Bachelor?

A. No sir.

Q. You wholly left it to Mr. Everest?

A. As I understood it, it was to cancel a $2000.00 mortgage.

345 Q. Do you remember which was executed first the mortgage or the deed?

A. The mortgage.

Q. Was it your understanding that that deed was made to Bachelor in trust the same as this mortgage was made to secure the settlement of the Holt heirs?

A. Well now how could I. I never dreamed anything of it. I thought I was dealing with the Holts all the time.

Q. And your understanding was that when you conveyed this 120 acres so far as you were concerned that passed all the title from you?

A. No, it seems as though he didn't decide which he would rely on the deed or the mortgage. The matter was held up.

Q. Who was it that was holding the mortgage and you didn't know which he would rely on?

A. I suppose Mr. Wheeler was holding the mortgage.

Q. Who did you suppose was holding the deed?

A. The man to whom it was made. That was all I could know about it.

Q. The records show that Ferdinand Bachelor was the man to whom you conveyed the 120 acres of land by a warranty deed. You signed that deed at the request of Mr. Everest?

A. Yes sir.

Q. You received no money for it?

A. Just as I told you, I understood the deed would satisfy the mortgage; but afterwards it seems that the parties could not determine whether they would accept the one or the other.

Q. Which did they finally accept?

A. There has been a law suit over that. I don't know.

Q. Did you ever get the land back?

A. I never did.

Q. You never did make any deed to that land except the trust deed to Ferdinand Bachelor?

Objected to as assuming that there was a trust deed contrary to the fact. Exception.

346 Q. Now Mr. Murphy this deed that you say you conveyed to Bachelor where you thought you were conveying it in settlement of the claim of the Holt heirs, has Mr. Bachelor ever re-conveyed to you the title which he held in trust?

Objected to the first part of it as assuming that the witness testified that he thought he was conveying it in trust for the Holt heirs. Exception noted. The witness states that he conveyed that to cancel a mortgage.

A. No, he has not conveyed to me anything.

Q. Have you ever made any other title except the deed referred to dated the 27th day of July 1897?

A. I think I did.

Q. If Mr. Bachelor ever had any title to this land, he just had the title conveyed by this deed dated the 27th day of July, 1897?

Objected to as calling for a conclusion of law on the part of the witness, not for a question of fact.

A. That was the only deed I ever conveyed to him.

Q. I notice from the record that on the 24th day of January, 1898, you and your wife, Louisa Murphy, conveyed to Ewers White the west half of the north-east quarter of the south-west quarter of section 27, Township 12 North, Range 3 West for a consideration of $3000.00 the receipt whereof is hereby acknowledged. Do you remember of ever making a conveyance of that kind?

A. Yes sir.

Q. Do you remember who was present when that conveyance was made?

A. I suppose Mr. Everest was present. He was my attorney I know.

Q. Mr. Everest and Mr. White?

A. Probably White, yes sir.

Q. Did you at that time or any other time receive the $3000.00 mentioned in this deed?

A. Ewers White had my note for $750.00, the original purchase money when I bought out his relinquishment—part of the original purchase money. When I made him that deed, he surrendered me that note and was to assume the payment of the $2000.00
347 mortgage if it had to be paid and some attorney fees.

Q. Did you receive any money at all?

Objected to as incompetent and immaterial.

A. I stated to you that I received my note of $750.00 with interest three or four years.

Q. But you received no money?

A. No sir.

Q. That was a note which you had executed to Mr. White in part consideration of his relinquishing his title to the government?

A. Yes sir and for his improvements, etc.

Q. What improvements did he have on the land at that time?

A. He had a house costing a hundred dollars or more and the whole thing was fenced, and some ten or fifteen acres broke.

Q. I will ask you whether or not at the time that this deal was made on the 24th day of January 1898, if at that time you discussed in the presence of Mr. Everest with Mr. White the conveyance that had been made for the purpose of paying these Holt heirs?

A. I don't remember that I did.

Q. Mr. Everest knew all about that arrangement with the Holt heirs at that time, did he?

A. He knew all there was to know. I didn't know anything except through him.

Q. All you knew was what you learned through Mr. Everest?

A. Yes sir.

Q. You submitted the whole thing to him?

A. Yes sir.

—. Now you had some conversation with Mr. White in order for him to understand that he was to pay this $2000.00 did you not?

A. White came to me and seemed to be willing to accept the deed from me in payment of the note and assume the mortgage. I don't know who advised him. He seemed to have that kind of a view about it. I told him that if he would surrender that note, I would make him the deed as far as I was concerned.

348 Q. Do you remember at that time whether this mortgage had been transferred to Ferdinand Bachelor?

A. I do not. The mortgage was of record and that was all I know about it.

Q. Did Mr. White at that time say anything about this transaction with Ferdinand Bachelor at the time you made the deed?

A. I don't recollect. Mr. White seemed to have a counsel of his own.

Q. Who was his counsel?

A. I think it was some body from Kansas, Mr. Cates I think was his name.

Q. You did not explain to Mr. White anything?

A. I don't remember now of explaining anything. I know his attorney was here. It has been a long time ago.

Q. Mr. Murphy to refresh your memory some, I will ask you if Mr. White had not referred something about this conveyance to Mr. Bachelor, and that he came to you and was displeased about that matter, and in the settlement that you then made this arrangement with Mr. White.

A. Mr. White may have learned something about it, but I don't know.

Q. Do you remember of that occurring?

A. I cannot now recall it.

Q. You would not say whether that was a fact or not?

A. No it has been a long time ago, and there has been so many things transpired in the case then that I can't remember.

Q. What was the settlement between you and the Holt heirs as detailed to you by Mr. Everest?

A. My recollection about it is that I submitted it wholly to him. the decision was against me, and my instructions were to make the best compromise with the Holt heirs he could. Of course when he submitted it to me as he had arranged I signed it without hesitancy.

Q. Did Mr. Everest tell you what it was at the time?

A. He certainly told me about the execution of the mortgage when he wrote it and told me to execute it.

Q. Now was the $2000.00 to be paid in full settlement of the rights of the Holt heirs, or were they to receive this 120 acres of land?

A. The arrangements were $2000.00. I executed a mort-
349 gage that covered the $2000.00 as I thought. Of course I never heard of anybody except Mr. Ransom as their attorney.

Q. How came you afterwards to execute this deed to Ferdinand Bachelor for that 120 acres?

A. I told you a while ago I never had any talk with Mr. Ransom, but I have been able to state what I learned outside of a personal talk with him. I learned afterwards from my attorney that Mr. Ransom would cancel the mortgage providing I would execute the deed to Bachelor.

Q. And on that consideration you executed the deed to Ferdinand Bachelor?

A. I executed the deed, and that was all there was of it.

Q. And so far as you are concerned Mr. Murphy that was a complete conveyance of that 120 acres, and a settlement of all difficulties between you and everybody else as far as that land was concerned?

A. I considered it to be. I could not find out whether Ransom wanted to rely on the mortgage or the deed. It seems as though he never put the deed on record.

Q. You never expected the Ransom or the Holt heirs to deed you back that 120 acres at the time you deeded it to Ferdinand Bachelor at their request did you?

Objected to as assuming state of affairs not shown by the records.

A. Not as far as I was concerned.

Q. Do you remember of seeing Ferdinand Bachelor on or about the 12th day of May 1899?

A. I do not.

Q. Do you remember about the time that this trade between Ferdinand Bachelor and Ewers White was consummated with A. H. Classen for the purchase of this 120 acres of land, about the 12th day of May 1899?

A. No I don't remember about the precise time.

Q. Do you remember the circumstances of that trade?

A. I did not have anything to do with it.

Q. I will ask you if on or about the 13th day of May, 1899, if A. H. Classen didn't pay you $800 in cash in consideration of the consummation of this trade between Classen and White and
350 Bachelor?

Objected to as incompetent and immaterial.

A. He did not pay me any cash. At least I don't remember of it.

Q. Do you remember of any money being paid to you on that occasion?

A. I do not now remember it at all.

Q. Do you remember of Mr. Everest paying you $800.00 for Mr. Classen on that occasion?

Objected to as incompetent, irrelavant and immaterial and cross examination of his own witness.

A. I remember that I had perhaps borrowed money, or at least Mr. Classen had furnished me money, but how that was settled on that day I have no recollection.

Q. You say Mr. Classen had loaned you previous to that?

A. Yes sir.

Q. As much as $800.00.

A. I don't remember about the size of it at all. I got it at different times.

Q. Did you give him a note?

A. I gave him an obligation.

Q. Have you any memoranda or anything which you could refresh your mind?

A. I have not.

Q. You have no way of showing how much money you borrowed?

A. I don't remember that it had anything to do with that case at all. I remember that five or six years ago I got some.

Q. But you can't remember of having any talk with Mr. Everest

or Mr. Classen, on the 13th day of May, or about the time that Mr. Classen bought this land from White and Bachelor and of Mr. Classen's paying you $800.00 in sttlement of that deal?

A. If we had a talk at all, I don't remember it.

Q. If he paid you $800.00 you would remember it?

A. If he paid me $800.00 I would remember it.

Q. That would impress a man.

A. That would impress me.

351 Q. Now to make a long story short Mr. Murphy, in the final settlement of the matter after you had proved up to settle all of these controversies and have peace, you just simply gave up this 120 acres of land, didn't you and took the south-east forty in settlement of your interest there and stop all litigation.

A. That is just what it cost me.

Q. That was your understanding at the time these deeds and mortgages were all executed was it?

Objected to as incompetent.

A. It certainly was.

Q. And that forty acres in the south-east corner of that quarter is all that you have received out of all this litigation and settlement?

A. Yes sir.

SAMUEL MURPHY.

352 *Deposition.*

Deposition of witness taken to be used in an action pending in the District Court within and for the County of Oklahoma in the Territory of Oklahoma, wherein Amelia M. Holt is plaintiff, and Samuel Murphy and A. H. Classen are defendants, in pursuance of the notice hereto attached and at the time and place therein stated.

The said plaintiff appeared by her Attorney J. S. Jenkins and the said defendants appeared by their attorney J. H. Everest and thereupon the said Amelia M. Holt produced the following witness to-wit:

FERDINAND WINTHROP BATCHELDER, of lawful age, being first duly sworn, deposes and saith:—

Q. State your name, age and residence.

A. Ferdinand Winthrop Batchelder, 40, Weston, Mass.

Q. Are you acquainted with Samuel Murphy?

A. Yes.

Q. Are you acquainted with A. H. Classen?

A. No.

Q. Are you acquainted with Ewers White?

A. No.

Q. Are you acquainted with C. V. Ransom?

A. Yes.

Q. Are you acquainted with J. H. Everest?
A. Yes.
Q. Are you acquainted with Capt. G. W. Batchelder?
A. Yes.
Q. Were you acquainted with Captain D. F. Stilos?
A. Yes.
Q. Are you acquainted with the north-half of the south-west quarter and the south-west quarter of the south-west quarter Section 27, Township No. 12, North of Range 3 West, Indian Meridian, containing 120 acres, more or less, according to the Government Survey?

A. Yes.

353 Q. The records of Oklahoma County show that you purchased the above described land from Samuel Murphy and Wife on the twenty-seventh day of July, 1897, for a consideration of Two Thousand ($2000.00) dollars in hand paid. Do you know anything about that transaction?

A. I know that there was such a transaction.
Q. Do you know anything about that transaction yourself?
A. This happened many years ago, and I do not recollect very much about it now. To the best of my recollection it was a matter handled on my behalf by my father.
Q. Then you know nothing of this transaction of your own knowledge?
A. My answer to the foregoing question covers the matter as far as I recollect.
Q. Were you present at that transaction?
A. I think not.
Q. Do you know where you were at that time?
A. Probably in Boston. My business headquarters were here.
Q. Did you furnish this ($2000.00) Dollars in the deed above mentioned to pay for the land above described?
A. I do not know whether I did or not.
Q. If you furnished that ($2000.00) Dollars on or about the 27th day of July, 1897 your books, or your bank book, would show that fact?
A. To the best of my recollection I left Oklahoma in 1895 or 1896 and my affairs there were left in charge of my father. This is a matter that would probably come under his charge and I do not recollect just what was done.
Q. If you had sent this ($2000.00) Dollars from your office here in Boston to Samuel Murphy in Oklahoma City, then you would have a record of that fact here in Boston, would you not?
A. Ordinarily, yes.

Q. Can you answer the question positively?

354 A. No.

Q. Have you ever sent large amounts of money from here to Oklahoma without making a record of it?

Not answered.

Q. Do you keep books showing a record of your transactions?

A. At the present time I keep no books of my personal affairs except a check book.

Q. In sending Two Thousand Dollars from here to Oklahoma, yuo would send that amount by draft or by check, would you not?

A. Yes.

Q. Then you would have a check showing that you had sent this money to Oklahoma, would you not?

A. Yes.

Q. Could you produce that check now?

A. No.

Q. Why not?

A. I don't remember anything about the matter.

Q. If you ever gave a check for that money, on the date above mentioned, you could look among your old checks and find it, could you not?

A. I don't remember whether or not I kept a check book at that time, and certainly don't know of any existing now of that date.

Q. If you ever issued such a check you have it among your old papers, hav-n't you?

A. No.

Q. Did you ever see that deed that Samuel Murphy and his wife executed to you on the 27th. day of July, 1897?

A. I don't remember whet-er I did or not.

Q. Did you have any correspondence with C. W. Ransom on or about the twenty-seventh day of July, 1897 in reference to the above named deed?

A. I don't remember whether I did or not.

355 Q. Do you keep letter files?

A. Not of my personal letters.

Q. Then you have no recollection of having seen the Murphy deed above referred to?

A. No.

Q. Do you recollect of filing a suit, or authorizing Mr. Everest to file a suit against Ewers White to set aside the deed, which was executed by Mr. Murphy and his wife to Ewers White, covering the land deeded to you?

A. No.

Q. Did you ever convey this land above described to any person?

A. Yes.

Q. To whom did you convey it?

A. I don't recollect the name of the party.

Q. Where were you when you conveyed that land?

A. In Boston, to the best of my recollection.

Q. Were you ever in Carthage, Missouri?

A. Yes.

Q. Were you there on or about the 12th day of May, 1899?

A. I don't remember.

Q. Were you ever in Joplin Mo.

—. Yes.

Q. Do you know any one there?

A. Yes.

Q. When were you in Joplin last?
A. I don't remember. I should say off hand about three years ago.
Q. How long did you remain there?
A. I don't remember that.
Q. Did you see A. H. Classen while you were in Joplin?
A. I don't remember whether I did or not.
Q. Do you remember of ever seeing Mr. Classen?
A. I don't remember whet-er I did or not.
356 Q. At what hotel did you stop in Joplin?
A. At the Keystone Hotel.
Q. If you were in Joplin on or about the 12th day of May, 1899 you would be registered at the Keystone Hotel?
A. Not necessarily.
Q. Where else did you ever stop at Joplin?
A. When I was in that district I stopped either in Joplin, or in Carthage; both towns are connected by a trolley line and it is a comparatively easy matter to run from one town to another. I might therefore be in Joplin and be registered somewhere else, for instance in Carthage.
Q. At what Hotel did you stop in Carthage, Mo.?
A. I do not now recollect the name of the Hotel.
Q. Describe the hotel?
A. It was the leading hotel there diagonally opposite the Court House.
Q. Did you see C. W. Ransom while you were in Carthage or Joplin at the time above stated?
A. I saw C. W. Ransom in Carthage or Joplin in one of my visits to those places, but I am not positive as to the time.
Q. Did you have any transaction with C. W. Ransom with reference to the land above described, when you met him at Carthage or Joplin?
A. I don't remember.
Q. If you had made a conveyance of the land above described at the suggestion of Mr. Ransom at that time, and received Three Thousand ($3000.00) Dollars would that impress you so that you could recollect it?
A. I should think so.
Q. Did that occur when you met Mr. Ransom at Carthage or Joplin, as above stated.
A. I don't remember.
357 Q. What is your best recollection?
A. My best recollection was that I didn't.
Q. Don't you know Mr. Batchelder, that he did not pay you Three Thousand ($3000.) Dollars on that date above stated?
A. My best recollection is that he didn't.
Q. Have you any recollection at all of any transaction of that kind having occur-ed?
A. No.
Q. You have reasonably good recollection, haven't you?
A. Yes.

Q. Did you ever deed the land above described to Ewers White?
A. My best recollection is that that deed was sent to me by my father for execution, and that I executed it and returned it, but do not now remember the name of the party to whom it was deeded.
Q. Was there a letter accompanying that deed?
A. I presume there was.
Q. Could you refresh your mind with reference to that transaction by referring to the letter that accompanied the deed?
A. I could if I had the letter.
Q. Could you produce the letter?
A. No.
Q. Have you that letter?
A. I think not. I don't keep files of my personal letters, and am positive that I have not the letter.
Q. What consideration did you receive for executing the deed just referred to?
A. I don't remember exactly what the consideration was. It was a matter handled for me by my father.
Q. Do you know anything about that consideration of your own knowledge?
A. This matter was in some way connected with an interest I had in the McElroy claim, west of Ponca City, Oklahoma.
358 Q. That McElroy deal was closed between you and Mr. Ransom some time during the year 1897, was it not, Mr. Batchelder?
A. I don't remember.
Q. Well do you remember that the McElroy deal and this deed that we are talking about, dated May 12th. 1899 were connected and closed up about the same time?
A. I don't remember about the dates and time.
Q. Would you be positive that the McElroy deal and this deed last referred to were connected at all?
A. As I have said before, my father was handling this matter and it is my recollection that these two deals were connected.
Q. Did you receive Three Thousand Dollars ($3000.) from A. H. Classen or any one representing him, in consideration of your executing the deed, above referred to, dated the 12th day of May, 1899?
A. I have no recollection of it.
Q. If you had received Three Thousand ($3000.) Dollars from A. H. Classen on or about that date, you could refresh your mind and be positive by looking, at your bank book, could you not, Mr. Batchelder?
A. Yes, if I had one at that time.
Q. Do you keep a pass book with you- bank when you make deposits?
A. Yes.
Q. Did you have a pass book on or about the 12th. day of May, 1899?
A. I don't remember whether I did or not.
Q. What bank did you make your deposits with at that time?

A. To the best of my recollection it was the Globe National Bank.

Q. Mr. Batchelder do you handle such large amounts of money of your own personal funds that you could not remember a deposit of Three Thousand ($3000.) Dollars?

359 A. Ordinarily, No.

Q. What were you worth in money and property on or about May 12, 1899.

A. Witness refuses to answer.

Q. Q. Did you receive any amount of money from A. H. Classen, or any one representing him at any time on or about the 12th. day of May, 1899.

A. To the best of my recollection no.

Q. Did you receive any money from A. H. Classen, or from any one representing him at any time since the 12th. day of May, 1899?

A. To the best of my recollection no.

Q. Did you receive Fifteen Hundred ($1500.) Dollars, or any other amount from Ewers White, or any one representing him, in consideration of your executing the deed above referred to, dated the 12th/ day of May, 1899?

A. To the best of my recollection no.

Q. Do you know John C. Keeman of Joplin, Mo.?

A. I am acquainted with him. I think he is the Assistant Cashier of the bank there.

Q. Who was your agent to transact your business for you in Oklahoma on or about the 12th. day of May, 1899?

A. My father acted for me in most matters.

Q. In the transfer of his land, on the 12th. day of May, 1899, there was no money passed that you know of?

A. I don't remember.

Q. You don't know of any now?

A. I don't recollect.

Q. Do you recollect now that any money passed in consideration of that trade referred to?

A. I don't recollect much of anything about it and would not want to positively now one way or the other.

360 Q. Do you recollect anything about it?

A. I don't recollect anything about the money part of the matter.

Cross-examination by J. H. EVEREST:

Q. Have you any interest at this time, either directly or indirectly in the 120 acres formerly owned by you in the south-west quarter, Section 27, Township 12 North, Range 3 West, Oklahoma County, O. T.

A. I think not.

Q. You have never *have* made but the one deed for the tract of land, have you; the one referred to in your direct examination as having been sent you by your father?

A. No.

Q. If the records of Oklahoma County show that Ferdinand W.

Batchelor made a Quit-Claim deed on the 12th/ day of May, 1899, to Ewers White of the North half and South-west quarter, Section of the South-west quarter, Section 27, Township 12, Range 3 West, Oklahoma County, O. T. for the consideration of Fifteen Hundred ($1500.) Dollars said deed having been acknowledged in Jasper County, State of Missouri before John C. Keenan, Notary Public and filed for record May 22nd. 1899, that is the deed referred to, as having been sent you by your father?

A. Yes.

Q. Your father, or who ever he may have designated as his agent in the matter was authorized to collect whatever consideration that may have been given for the execution and delivery of that deed, was he not?

A. Yes.

Q. Do you know whether or not C. W. Ransom was the attorney for you or your father in whatever legal business you had about that time in Oklahoma?

A. Yes.

361 Q. You have no knowledge or recollection at this time of how much money was paid for that deed, or whether or not the consideration named in the deed was ever collected by your father C. W. Ransom, Captain D. F. Stiles, or any other person who may have acted in the transaction at the Oklahoma end of the line?

A. No.

Q. In other words you are unable to say how much Mr. Classen, or Mr. White ever paid for that deed, or to whom they paid it?

A. I am not.

Q. That is also about the release of mortgage on the same tract executed by you at about the same time as the deed.

A. It is true.

Q. If I understand your direct examination correctly, you acquired this deed for 120 acres of land in Section 27, by a deal in connection with the interest you had in the McElroy land west of Ponca City, this deal having been made by your father for you.

A. Yes.

Q. Mr. C. W. Ransom who acted as your attorney in the McElroy matter and with whom that deal made would probably be more familiar with that transaction than any other person, would he not?

A. Yes.

Q. Council for plaintiff in this case seems to consider it somewhat remarkable that you can not remember all the details of these transactions conducted through your agent several years ago. I will ask you in what business you have been engaged since 1897 up to the present time?

A. I have been connected with the United States Oil Co., The American Zinc Lead and Smelting Company, the United States Mining Co., the American Gold Dredging Co., the Centen-ial-Eureka Mining Co., the Pneumatic Scale Co., the Island Creek Coal Co.

362 Q. Now in this connection, if you have no objection to doing so, I wish you would state in a general way, as to the

aggregate amount of business, estimated in dollars, that passes through the hands of your firm each year.

A. Approximately during the past year, $1,500,000. One Million Five Hundred Thousand Dollars, have passed through this office.

Q. You left Oklahoma in 1895 or 1896 did you not, Mr. Batchelder?

A. To the best of my recollection yes.

Q. Since that time, if I understand your direct examination, your business interests in Oklahoma have been taken care of by your father, Captain Batchelder, and those to whom he may have intrusted it, and you have given but little personal attention to it, have they not?

A. Yes.

Redirect:

Q. What was the nature and extent of your business in Oklahoma in 1898 and 1899?

A. I had various interests in town lots and claims there. I also owned a claim there.

Q. Can you give me a list of the claims that you had an interest in?

A. No.

Q. Do you refuse to give a list of the claims that you had an interest in?

A. Yes.

Q. Mr. Everest stated that you could not remember all the details of this transaction with reference to the transfer, dated the 12th day of May, 1899. Do you remember a single detail with reference to that transaction further than signing and acknowledging the deed of that date?

A. I cannot recollect anything beyond what I have already stated.

363 Q. Do you remember one single instance about that trade except the signing and acknowledging the deed of that date?

A. I cannot recollect anything beyond what I have already stated.

Q. Do you refuse to give any other answer to that question except that which you have already given?

A. That is the only answer I can give.

Q. If you remember anything about that trade, except the acknowledging and signing of the deed, you could tell it, could you not, Mr. Batchelder?

A. I have told all I remember.

Q. Have you answered in your testimony that you know a single detail with reference to the transaction above referred to, except the signing and acknowledging the said deed?

A. I cannot recollect anything beyond what I have already stated.

Q. Do you remember a single instance of any kind with reference to the trade in which you sold the 120 acres above referred to on the 12th. day of May, 1899?

A. I cannot recollect anything beyond what I have already stated.

Q. Can you recollect any detail of any transactions that you have had within the last three or four years?

A. Yes.

Q. Can you explain why you remember the details of other transactions and cannot remember a single detail in reference to the sale of the 120 acres of land above referred to?

A. No.

Q. You state that you have done $1,500,000. of business in this office during the last year. Do you mean that that much money has passed through your hands?

A. Yes.

Q. You actually have counted and handled that amount of money in this office within the last year?

A. What I mean is that I *ma* the Treasurer of these companies and that amount of money in checks or otherwise have passed
364 through my hands.

Q. In other words this amount of business was transacted principally on paper?

A. If by paper you mean checks, yes.

FERDINAND WINTHROP BATCHELDER.

365 *Depositions.*

In the District Court Within and for Oklahoma County, Oklahoma Territory.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY, A. H. CLASSEN ET AL., Defendant.
SAMUEL MURPHY, A. H. CLASSEN ET AL., Defendant.
Depositions.

Deposition of witness taken to be used in an action pending in the District Court within and for the County of Oklahoma and the Territory of Oklahoma, wherein Amelia M. Holt is plaintiff and Samuel Murphy and A. H. Classen *et al.* are defendants, in pursuance of the notice hereto attached and at the time and place herein stated.

The said plaintiff appeared by her attorney, J. S. Jenkins, and the said defendants appeared by their attorney, J. H. Everest.

Thereupon the said Amelia M. Holt, plaintiff, produced the following witnesses to-wit:

GEORGE L. STILES of lawful age being first duly sworn deposeth and saith:

Fees demanded $1.00 and paid.

GEORGE L. STILES being called as witness for the plaintiff and having demanded his fees which were duly paid was duly sworn to tell the truth, the whole truth and nothing but the truth — testifies as follows:—

Q. State your name age and residence.
A. George L. Stiles, 23 years old, 11 E. Eighth St., Oklahoma City.
Q. Do you know Ewers White?
A. Yes Sir.
Q. Do you know C. W. Ransom?
A. Yes sir.
366 Q. Do you know A. H. Classen?
A. Yes, sir.
Q. Do you know J. H. Everest?
A. Yes sir.
Q. Did you know Capt. B. F. Stiles in his life time?
A. Yes sir
Q. What relation, if any are you to him?
A. I am his son.
Q. Was Capt. Stiles living on the 13th day of May, 1899?
A. Yes sir.
Q. Were you and he engaged in business in Oklahoma City at that time?
A. Yes sir. Living——
Q. What kind of business?
A. Real estate.
Q. Do you know the South-west ¼ Sec. 27, Twp. 12 Range 3 W., known as the Murphy and McMichael claim?
A. Yes, sir.
Q. On or about the 13th day of May 1899 did you and your father negotiate a trade for any portion of that land from any person or persons to A. H. Classen?
A. Yes, sir the deal was made by father.
Q. Were you present?
A. I was present at different times while the negotiations were in process.
Q. Who else was present?
A. A. H. Classen, Ewers White and C. W. Ransom that's all I think.
Q. Do you know Ferdinand Batchelder?
A. Yes, sir.
Q. Was he present?
A. Not at any time when I was there.
Q. Do you know G. W. Batchelder?
A. Yes, sir.
367 Q. Was he present at any time during the negotiations?
A. Not at any time that I remember of.

Q. Whom did you and your father represent in that trade?
A. A. H. Classen I would say.
Q. With whom did you make the trade?
A. C. W. Ransom and Ewers White.
Q. Have you any books or memorandums with reference to that trade?
A. Not that I can find.
Q. Have you looked for that record?
A. Yes, sir.
Q. Did you and your father ever receive any commission from anybody or compensation for making that trade?
A. Yes, sir.
Q. How much did you receive?
A. Either $100.00 or $125.00.
Q. From whom did you receive it?
A. C. W. Ransom.
Q. Did he pay you in money or check?
A. It was given as credit on attorneys' fees.
Q. On whose attorney fee?
A. On cases that Ransom had looked after in court for father.
Q. Was that all the commission that you would receive for making that trade?
A. No, sir.
Q. What other commissions were there?
A. Mr. Classen was to pay a commission.
Q. How much was he to pay?
A. I think the same amount.
Q. About how many times was Classen in your office during the negotiation of that trade?
A. At least three or four times.
Q. How much money did Mr. Classen pay for that land?
A. I do not know.
368 Q. What amount of money did he agree to pay for that land?
A. I do not know.
Q. Have you any way of ascertaining what amount of money Mr. Classen was to pay Mr. White and Mr. Ransom for that land?
A. No, sir.
Q. What per cent. of commission did you charge for negotiating sales at that time?
A. The commission was agreed upon to be a certain amount and wasn't——
Q. What was the amount of commission?
A. If I remember correctly it was $200.00.
Q. What were you to do you and your father, in order to consummate that trade for Mr. Classen?
A. We were to find out what the different parties interested were willing to take for their interest in the land.
Q. Did you find that out for Mr. Classen?
A. Yes, sir.
Q. Who were the different parties claiming an interest in the land?

A. Why the parties negotiating was C. W. Ransom and Ewers White.

Q. What interest did Ewers White represent?

A. His own, I think.

Q. What interest did C. W. Ransom represent?

A. Ferdinand Batchelder.

Q. Did you ever write to Ferdinand Batchelder about it?

A. Father may, or may not have, I do not know.

Q. Did you and your father receive any letter from Ferdinand Batchelder about that time with reference to the land?

A. Not that I know of.

Q. You had access to all the letters which come into the firm did you not?

A. Yes, sir.

Q. How did you find out that Ferdinand Batchelder claimed any interest in that land?

369 A. I understand that Ransom was his attorney.

Q. Who did you understand that from?

A. Merely the conversation which I heard in the office.

Q. How much did Mr. Classen give Mr. Ransom for the Batchelder interest in that land?

A. I do not know.

Q. Did you see any money pass in the closing up of that trade?

A. No, sir.

Q. Do you know whether Mr. Classen paid anything for that land *or* of your own knowledge?

A. I do not.

Q. Did you and your father receive any money or anything else from Mr. Classen in payment for that land?

A. No, sir.

Q. Did Mr. Classen deliver to you and your father or either of you any money or checks or anything else to be delivered to Ferdinand Batchelder or Ewers White or anybody else in payment for that land?

A. I don't know whether I could answer that exactly, nothing passed to my knowledge while I was present.

Q. Do you know whether or not anything, that is money or checks, passed through your firm from Mr. Classen to Mr. Batchelder or Mr. White?

A. I do not know.

Q. Did your firm have anything to do with purchasing any portion of the land above described, from Ferdi-and Batchelder for Ewers White?

A. Not that I know of.

Q. State, if you know, who you represented when you purchased the Batchelder interest in the land above described?

A. We were first engaged by Mr. Classen and the deal held fire for so long that we at last acted as, or used our influence to

370 bring a satisfactory settlement to all parties.

Q. Do you mean that you acted as agent for all the parties closing up that trade.

A. I mean that all parties were anxious to close the deal, and it was agreed that each should pay his share of the commission.

Q. Did Mr. Classen and Mr. Ransom meet in your office and talk together with reference to the land that Mr. Classen was buying from the parties that Mr. Ransom represented?

A. Yes, they were both there at the same time.

Q. Did Mr. Classen and Mr. Ransom meet in your office and talk about the purchase of that land more than once?

A. I think so.

Q. About how many times?

A. About twice.

Q. Do you remember any conversation that took — between Mr. Ransom and Mr. White in your office about the date that I mentioned?

A. No, sir.

Q. Do you remember how much Mr. Ransom asked Mr. Classen for the interest that he represented in that land?

A. I do not.

Q. Have you among the files in your office any letters, checks or other writing that would throw any light on this transaction?

A. Not that I can find?

Q. Have you told all that you know with reference to this transaction with Mr. Classen buying the portion of the land above described?

A. I think so.

Cross-examination:

Q. This deal between White, Classen and the Batchelder interests represented by Ransom was carried on principally by your father was it not?

A. Yes, sir.

Q. Were you present when the deed and release from Batchelder were delivered or when the deed from White to Classen was
371 delivered?

A. No, sir.

Q. You have no means of knowing what consideration passed between the parties at that time?

A. No, sir.

Q. Do you know what checks, monies, or notes, if any, passed through your father's hands from Classen to those other parties?

A. I do not.

GEORGE L. STILES.

372 TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

In the District Court, Third Judicial District of the Territory of Oklahoma, Sitting in and for the County of Oklahoma.

No. —.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY & A. H. CLASSEN, Defendants.

The said Samuel Murphy and A. H. Classen and J. H. Everest attorney of record: You and each of you will take notice that on Wednesday the 5th day of November A. D. 1902 the Plaintiff above named will take the Depositions of Sundry Witnesses, to be used as evidence in the trial of the above cause, at Troy, N. Y. in the County of Rensselaer, in the office of the County clerk of Rensselaer, N. Y. between the hours of eight o'clock A. M. and 6 o'clock P. M. of said day and that the taking of the same will be adjourned and continued from day to day at the same place and between the same hours until they are completed.

J. S. JENKINS &
J. L. BROWN,
Attorneys for Plaintiff.

Service of the above notice is hereby acknowledged to have been made on this 21st. day of October, 1902.

J. H. EVEREST,
Attorney for Defendants.

373 *Caption.*

Deposition of witness taken to be used in an action pending in the District Court, within and for the County of Oklahoma and the Territory of Oklahoma, wherein Amelia M. Holt is Plaintiff, and Samuel Murphy and A. H. Classen are defendants in *the* pursuance of the notice hereto attached, and at the time and place therein stated.

That said Amelia M. Holt, plaintiff appeared in person, in her own behalf, and the said Samuel Murphy & A. H. Classen, defendants, appeared not.

And thereupon the said plaintiff produced the following witnesses, to-wit:—

AMELIA M. HOLT of lawful age being first duly sworn deposeth and saith.

Here the taking of deposition was adjourned until Nov. 8th. to be resumed at the same place and between the same hours as *sent* out in said notice.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY and A. H. CLASSEN, Defendants.

Q. State your name.
A. Amelia M. Holt.
Q. What is your age?
A. 51 years past.
Q. Where do you live?
A. Lansingburgh now the City of Troy.
Q. Where were you born?
A. Clinton County State of New York.
Q. Have you lived in the United States all your life?
A. Yes sir.
Q. Are you a native born citizen of the United States?
A. Yes sir.
Q. State whether you owned any land at the time of your husband's death if so much, and how much land you have owned since?
374 A. I did not own any, my husband owned about 95 acres at the time of his death which was mortgaged said mortgage was foreclosed and the property was sold to the mortgagee about one year after my husband's death.
Q. What was your husband's name?
A. Levi Holt.
Q. Is he dead or living if dead when did he die?
A. He died nine years ago in May.
Q. How much land if any did he own at the time of his death?
A. About 95 acres.
Q. How much land did he own from 1892 till the time of his death?
A. The same farm before mentioned.
Q. Was your husband a native born citizen of the United States?
A. Yes.
Q. Were you and your husband Levi Holt ever at any time divorced?
A. No sir.
Q. Was you ever at any time in Oklahoma, if so state the time.
A. No sir.
Q. Has Levi Holt ever been in Oklahoma from the date of your marriage until the 22nd of April 1889.
A. No.
Q. Was Levi Holt ever in Oklahoma after the date of your marriage?
A. No sir.
Q. How much land did Levi Holt own from the date of your marriage until the date of his death?
A. Only the farm before mentioned.
Q. State whether or not Levi Holt owned more than 160 acres of land at any one time after your marriage and prior to his death.

A. No sir, not that I know of.

375 Q. Did you ever authorize any person to sell or waive your rights in the southwest quarter of Sec. 27 Twp. 12 North range 3 W. I. M. situated near Oklahoma City and known as the Murphy McMicheal, Holt claim the title of which you are now suing.

A. No sir I never did. Neither by word nor by letters.

Q. Had your husband at any time prior to the time his soldiers declaratory statement was filed on the S. W. ¼ of Sec. 27 in Township 12 North of Range 3 West of the Indian Meridian in Oklahoma ever made a homestead entry, of any of the public lands of the United States, and if so then please state when and where he made this entry.

A. He never made an entry that I know of.

Q. Had your husband at any time before, that soldier declaratory statement was filed on the land above described ever made a preemption, of timber culture entry of any of the public lands of the United States, and if so when and where did he make such entries.

A. No sir not that I ever knew of.

Q. Did your husband ever enter upon and occupy any portion of the lands described in and declared open to entry in the President's Proclamation dated March 23, 1889, prior to 12 o'clock noon of April 22nd/1889, the same being the land in Oklahoma open to settlement on that day.

A. No sir.

Q. Was your husband at the time that Soldier's declaratory before asked about was filed, the proprietor of one hundred and sixty acres or more of land in any state or Territory.

A. No sir he was not.

Q. Was your husband a native born citizen of the United States and at the time that declaratory was filed on said land was he over twenty one years of age and the head of a family, Please give

376 his age at that time tell where he lived, and who the members of his family were?

A. My husband was a native born citizen of the United States. He was over twenty one years of age and the head of a family, I don't remember just how old he was at the time, he lived in Clinton County.

—. The members of his family were:

A. Myself, Earnest C. Holt, Nellie May Holt.

Q. I call your attention to papers attached headed 4-063, Homestead affidavit and to that printed portion of that paper beginning with the words "That my said application is honestly and in good faith made," ending with the words "under the homestead laws except" could your husband at any and all times from the date of the filing his said declaratory on said land have truthfully sworn to that printed statement to which your attention has been called up to the date of his death.

A. I have examined those papers and I know that he could have truthfully sworn to it all up to the date of his death.

Q. Do you know what your husband's intentions were about com-

ing to and settling on the land before described, in the event the said land was by the United States land department awarded to him and if you do then state fully what his intentions were as to that land and what he was going to do about it and tell fully all you know which will show what his said intentions were as to that land and what he was going to do about it and tell fully all you know which will show what his intentions were as to moving to and settling on said land if it was awarded to him and what he intended to do as to living on the same and acquiring the title to it if he could.

A. His full intention was to go and live on it, and have it a home for ourselves and do what ever the law required of him to do, and his full intention was to cultivate and work and earn a living if it was awarded to him, and have it for a home. He had even
377 spoken of putting cows upon it.

Q. As to yourself did you ever enter upon and occupy any portion of the lands described and declared open to entry in the President's Proclamation dated March 23, 1889 prior to 12 o'clock noon of April 22nd, 1889 the same being the land now in Oklahoma which were open to settlement on that day?

A. No sir.

Q. Were you at the time of your husband's death a native born citizen of the United States?

A. Yes sir.

Q. Were you over twenty one years of age and the head of a family after his death, tell how old you were when he died and what family was left you?

A. Yes I was over twenty one years of age, and was the head of a family after his death, I was in my 42 year when he died and my family was a son a daughter.

Q. Up to the present have you made a homestead entry of any of the public lands of the United States, and if so tell when and where you made such entry.

A. I never made any.

Q. Up to the present date have you ever made a timber culture or pre-emption entry of any of the public lands of the United States and if so when and where did you make such entry, have you at any time in your life ever been the proprietor of One Hundred and Sixty acres of land or more in any state or Territory?

A. No sir.

Q. After your husband died did you intend to in good faith if the land before described was by the United States awarded to you, move to the land and settle actually on the land and cultivate it for yourself and not for the benefit of any other person, or persons or corporation, and did you intend faithfully and honestly to endeavor to comply with all the requirements of the law as to settle-
378 ments residence, and cultivation necessary to acquire title to the land applied for?

A. I certainly did, and I was ready and willing to go at any time, if I had been notified.

Q. Were you at such time acting as agent of any person, corporation or syndicate in making such entry or in col-usion with any per-

son, corporation or syndicate to give them the benefit of the land entered or any part thereof of the timber thereon?

A. I was not acting as agent for any person, nor did I intend to give any part to any one.

Q. If you entered upon the land would you have applied to enter the same for the purpose of speculation?

A. No sir.

Q. If you had been informed that this land before described had been awarded to you by the United States and that you were allowed thirty days to come forward and settle on the land, pay the land office fees, and make a homestead entry thereon, would you at once and within the time allowed have come forward and settled on the land in good faith and made a homestead entry thereon, and paid the land office fees so doing?

A. I certainly would, had I known it.

Q. I send you a form of affidavit marked at the head 4-063 homestead affidavit. Please read that over carefully and then state whether or not from the date of the death of your husband you could have truthfully *have* sworn to that affidavit in its present form and then state whether you would have done so if you had known if this land had been awarded to you.

A. I could truthfully swear to the affidavit, and would have done so if I knew the land was awarded to me.

Q. I send you a form of affidavit marked at the top 4-102, affidavit I will ask you to carefully read that affidavit and state if after removing to Oklahoma you could truthfully have sworn
379 to that affidavit in its present form, and if you would have done so if you had known this land before described had been awarded to you.

A. Yes sir, that affidavit I could truthfully swear to and would have done so if I had known the land was awarded to me.

Q. I attach an affidavit marked 4-062, non saline affidavit, Please read that affidavit over carefully, I will now ask you if you had known that this land had been awarded to you, would you have come to the land personally and examined it so as to know whether it was saline or non saline land, and informed yourself in relation thereto, and if you had found it without salt, if you would have then signed and sworn to the affidavit.

A. Yes sir.

Q. I also attach a form marked 4007 application No. — homestead, I will now ask you to state whether or not you would have signed that application at Oklahoma City within the thirty days allowed if you had known that this land had been awarded to you.

A. Yes sir.

Q. If you had known that the land described had been awarded to the heirs of Levi Holt and that they were allowed thirty days in which to come forward and settle on the said land, and make the necessary affidavits, and pay the land office fees and make the homestead entry thereof at Oklahoma City, would you have come to Oklahoma City, settled on the said land, sworn to the affidavit sent for your inspection and made homestead entry of said quarter section of land within the time allowed.

A. I certainly would.

Q. After getting the homestead entry on said land would you have sought to dwell thereon and comply with the laws of the United States in relation thereto until you had earned patent to the said land and would you then have made final proof, taken title to said land?

A. Yes sir.

380 Q. Were you prevented from setteling upon, entering and earning said land by the fact that it had been awarded to the heirs of Levi Holt being concealed from you.

A. Yes sir by Ransom not notifying me that it had not been decided yet.

Q. Did you ever in any manner by word or writing authorize attorney Ransom or any other person to relinquish the right of the heirs of Levi Holt to make homestead entry on said land after it had been awarded to those heirs by the United States land department?

A. No sir I never did either by word or writing.

AMELIA M. HOLT.

I, Thos. Galvin, a Notary Public in and for the County of Rensselaer, in the State of New York, do hereby certify that the taking of depositions in this case was commenced on the 5th day of Nov., 1902, at the time and place named in said notice, that the taking of said depositions were continued from day to day on account of the absence of the defendants, and for the want of appearance of witnesses. I do hereby certify that the above named, Amelia M. Holt, the witness whose name is subscribed to the foregoing deposition was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the case aforesaid and that the deposition by her subscribed, was reduced to writing and subscribed by witness in my presence, and the same was taken on the day named in the notice hereto attached, between the hours of eight o'clock A. M. and six o'clock P. M. on said day and at the City of Troy, in the County of Rensselaer, in the Sta-e of New York in the Office of the County Clerk of Rensselaer County, as specified in the notice thereto attached and that I am not attorney for either of said parties or otherwise interested in the event of said action or relation in any manner to the parties of this action.

[SEAL.]

THOMAS GALVIN,
Notary Public, Rensselaer County, N. Y.

381 STATE OF NEW YORK,
City of Troy, Rensselaer County, Clerk's Office, ss:

I, Allen R. Thompson, Clerk of said County and also Clerk of the Supreme and County Courts, being Courts of record held therein, do hereby certify that Thomas Galvin, whose name is subscribed to the annexed jurats was, at the time of signing the same, a Notary Public in and for the said County, duly commissioned and sworn and authorized to administer oaths; that I am well acquainted with the

hand writing of the said Notary and verily believe that the signature to said jurat is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said County, this 17th., day of November A. D. 1902.

[SEAL.] ALLEN R. THOMPSON, *Clerk.*

382 Ransom & Baily, Attorneys, Perry, Ok. Ty.

PERRY, OK. TY., *November* 2, 1894.

MY DEAR AMELIA: The time is coming very soon when I shall secure a decision on Father Holt's claim, and it will be in his favor, that is almost certain now. It is going to be necessary for you to execute some papers and send them on to me to prove that he is dead and that you are his widow. I will endeavor to draw them and send by this mail if I can get time to do so.

They will be affidavits of your self, and the Doctor, and one or two other persons to prove the date and time that he died and your own affidavit with a certified copy of your marriage certificate to show the date and time of your marriage.

On receiving these papers, quietly get the doctor, and one person who was present when father died and go before a Notary Public and sign and swear to the affidavits. You can tell them that it is some papers with reference to your pension, or something of that kind. Also take along your marriage certificate and have the Notary Public make a certified copy of it.

Dealings with the public lands have to be carried on very strictly, and oftimes parties who have good rights forfeit them by offering to relinquish or sell their claims. Now there are very sharp parties on the other side of this fight, *and if they should write to you* or to father's address you must know in advance that *they are trying to get you into a trap, and do not write to them at all.* Send any such letters to me at once, and I will advise you what to do. They will make you big promises and offer money just to get you to
383 write to them, and then they would use your letter, to prove that you were speculating in government land and offering to sell out. Now you must remember this and see to it that you *do not write to any one here.*

Do just what I instruct you to do, and do it just when I want it done, and I will see to it that you and the little ones get a handsome thing out of this business. You and they both need it.

Perhaps by the first of the year it will be necessary for you to come out here. Certain it is that you will have to come before many months. I will attend to that for you and you need not worry about it at all. You will have to be here in person to file certain papers in the Land Office, and I presume when Edith once gets out here, it will be a long day before you get back. I have had an awful long and hard fight over this case. Nearly five years of litigation! Have fought the case from the Land Office here to the Commissioner's Office in Washington, and then by an appeal to the Secretary of the Interior, and have there gained the case and secured an award of the

land to Father Holt, and now they are filing a motion for review. I have a dead sure thing on the case now, if they do not work some scheme on you. Look out for them. They would as soon beat a poor soldier's widow out of her last cent as to eat their dinner.

Say nothing to people there about the claim, mention it to no one, as I want you and not the other heirs to get the benefit of father's interests in this matter. Get your matters there in shape so that you could come down here, if necessary.

Whenever you receive the papers that I send you, attend to executing them at once, and send them back to me without delay.

384 Trusting that this will find you all well, at home I will close,

From,

CHARLEY.

My address is El Reno, O. T.

Take good care of this letter or burn it up.

385 OKLAHOMA CITY, O. T., *Feb. 26th*, '94.

MY DEAR AMELIA: Your very welcome letter reached me some days ago. Was very glad to hear from you. I am awful busy these days, I guess Henry could tell you about how busy we are out here. He saw us when we were head over heels in business.

Well Edith and the Kids are all well. Edith has never had better health on the whole than this fall. She looks as young and acts as frisky as she did twelve years ago. Sometimes I think she is much handsomer and younger that she was then. She lives alone most of the time. We hope we will not have to do this much longer. She has two fine ponies and rides horseback whenever she can get time.

The children are all going to school. They are healthy and strong, and learning quite fast. As for myself I am flying around the corners trying to keep up with my business. Imagine me back in New York, trying a case one day in Burlington the next in Plattsburg, and the next in Malone or Ogdensburg and you can get some idea of what I am doing here. It is sixty odd miles from here to Perry, and thirty in the other direction to El Reno. Out in this great country we do not wonder at all at such things. It is an every day occur-ence for me to travel fifty or a hundred miles and then jump right into a case and turn on my heel and go as far in some other direction.

Well you asked about your case? The case is now pending before the Department at Washington on an appeal. There are two other parties that claim the land. I think that I have surely got it won, but there is a mere possibility of losing it. It will be something over a year yet before it will be entir-ly settled. Things move awfully slow here in this Country. There is three appeals that can be taken, and it takes about a year to each. I have had to

386 figure your case very clo-e and work it very sharp to get it in a position where it would sure come out right. I have now gotten it just exactly where I wanted it and will get a decision in it if there is any justice at Washington. The land is quite valu-

ble, and all we need to do is to wait, for action from Washington. The country here has felt the hard times very much, and property is not worth anything now.

When the time comes I want you to come out here and take possession of the land. This will be all arranged later.

All that you need to do about it, is to keep the matter from the other heirs. Whatever there is in it should lie between you and myself, and if you are discreet, it will never get to the ears of the rest of them. I do not care to pull a hugh chestnut out of the fire for my brothers-in-law. I want you to have a good lift out of it, should the case come our way.

I am much pleased to learn that you have kept the matter quiet. Continue to do so. Do not tell any one of it or in any way suggest that there is any possible interest in this direction. Here is a case where *silence is golden*.

There is one other point that you must watch. The land here is government land, and the government will not allow people to buy and sell it as in the east. Claimants are required to make oath that they do not take the land for speculation, but in good faith to make a home and homestead of it. Where a party offers to sell his land, or to take money for it he becomes liable to a contest. And a contest means a law suit over it that will run for three or four years, and may result in losing the land.

People out here are very sharp. They try to trap unwary claim-
ants into offering to sell their claims, and then they go and file
387 contest swearing that the party took the land for speculation,
and has offered to sell it out for money. Now you must be very careful neither to talk to any one nor to write to people who may write you from here.

As soon as these other parties find that you have got them beat, they will try to set a trap for you. They may write to you or may *may* get some one right up there to go and talk to you. Should they write there they would naturally write in the name of Levi Holt, as they have no way of knowing that he is dead. Later we will have to make proof of his death and make affidavits showing that you are his widow. But, for the time being the case is al- right in his name.

I have had to employ attorneys at Washington to look after the case. Should you ever receive any letters from parties here send them on to me and I will instruct you how to answer them, if it is best to answer at all.

Now I may not take time again to explain this matter to you again. Just remember that it is not safe to be writing to anybody about the matter. Then we will surely keep out of all traps. Well, I will close, Very Truly,

CHARLIE.

388 Ransom & Baily, Attorneys, Perry, Ok. Ter.

PERRY, OK. TER., *November* 3, 1894.

AMELIA:

I have just succeeded in getting the necessary papers drawn for you to execute, to show your right to father's claim. I send them with this letter.

Just as soon as you can do so attend to executing them. You must pick out one of the near neighbors who was present when father died or shortly afterwards, and take him to the Center with you to swear to one of the affidavits. You will also have to get the Doctor who was attending father to swear to the other. Then there is two affidavits for you to swear to, and another paper which you will have to sign merely.

A good man to go to if he is a Notary now is Goodspeed. Remember to take your marriage certificate to the Center with you when you go to attend to this business. I must have a certified copy of that. The Notary will make the copy and certify to it.

Give this matter prompt and careful attention. Read over each of your affidavits carefully and see that the date of father's death is inserted correctly, and the name of the baby written in.

With love to all,

CHARLIE.

389 *Notice to Take Deposition.*

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

In the District Court, Third Judicial District of the Territory of Oklahoma, Sitting in and for the County of Oklahoma.

No. 3021.

AMELIA M. HOLT, Plaintiff,

vs.

SAMUEL MURPHY & A. H. CLASSEN, Defendant-.

The said Samuel Murphy and A. H. Classen and J. H. Everest Attorney- of Record, you and each of you will take notice that on Thursday the 4th day of December A. D. 1902 the Plaintiff above named will take the Depositions of Sundry Witnesses, to be used as evidence in the trial of the above cause on behalf of the plaintiff namely: The daughter of the plaintiff Amelia M. Holt, who wrote letters for plaintiff to C. W. Ransom, in reference to the land in controversy, at Troy, N. Y. in the County of Rensselaer in the office of the County Clerk between the hours of eight o'clock A. M. and six o'clock P. M. of said day, and that the taking of the same will be adjourned and continued from day to day at the same place and between the same hours until they are completed.

J. S. JENKINS & J. L. BROWN,
Attorneys for Plaintiff.

Service of the above notice is hereby acknowledged to have been made on me this 29th day of Nov. 1902.

J. H. EVEREST,
Attorney for Def'ts.

390 Deposition of witness taken to be used in the action pending in the District Court within and for the County of Oklahoma in the Territory of Oklahoma, wherein Amelia M. Holt is plaintiff and Samuel Murphy and A. H. Classen are defendants. In Pursuance of a notice hereto attached, and at the time and place therein stated, the said Amelia M. Holt appeared in person and the said defendant-, did not appear, and thereupon the said Amelia M. Holt produced the following witness to-wit: Julia Dunham of lawful age being first duly sworn deposseth and saith:

Q. State your name, age and residence.

Questions propounded to Mrs. JULIA DUNHAM, daughter of Amelia M. Holt.

Q. What is your name?
A. Mrs. Julia Dunham.
Q. What is your age?
A. Twenty three.
Q. Where do you reside?
A. 333 Third Ave. Lansingburg, now City of Troy.
Q. Do you know Amelia M. Holt plaintiff in this case?
A. I do.
Q. What relation is she to you?
A. My mother.
Q. Did you know Levi Holt in his life time?
A. I did.
Q. State whether or not you resided with your mother while she was the wife of Levi Holt.
A. I did.
Q. State whether or not of your own knowledge Levi Holt resided at home all the time with your mother from April 1st., 1889 till the time of his death.
A. He did.
391 Q. Did Levi Holt make any long trips from April 1889 till the time of his death?
A. He did not.
Q. Do you know C. W. Ransom?
A. I do not personally.
Q. State whether or not you ever wrote any letters for your mother to C. W. Ransom in reference to the land in controversy in this suit.
A. I did.
Q. State whether or not you ever wrote a letter for your mother, by her authority, to C. W. Ransom, in which she authorized you to say to Mr. Ransom that she was in the boarding house business and doing well and that she could not afford to leave her business and go to Oklahoma and settle on the land in controversy, and authorized

Mr. Ransom to dispose of the land in any way that suited him, or words to that effect?

A. I did not, but I wrote him in the fall of 1895 that any time he would send for her she would come.

Q. About how many letters did you write to Mr. Ransom for your mother Amelia M. Holt since the fall of 1895?

A. I have not.

Q. State whether or not your mother ever at any time authorized you to write a letter to Mr. Ransom and tell him that she would not come to Oklahoma and file on the land in controversy in this suit, or words to that effect?

A. I did not. The last letter I write said that she would go and he never sent for her.

Q. If you ever wrote such a letter to Mr. Ransom state whether you had any authority from your mother to write such a letter.

A. I never wrote him such a letter and had no authority from my mother to write such a letter.

MRS. JULIA DUNHAM.

392 I, Thomas Galvin, a Notary Public within and for the County of Rensselaer, in the State of New York, do hereby certify that the above named Julia Dunham the witness whose name is subscribed to the foregoing deposition, was by him first duly sworn, to testify the truth, the whole truth, and nothing but the truth, in the case aforesaid, and that the deposition, subscribed, was reduced to writing and subscribed, by the witness, in my presence, and the same was taken on the 4th day of December, 1902, between the hours of eight o'clock A. M. and six o'clock P. M., of said day and at the office of the county clerk, and the town of Troy, in the county of Rensselaer and State of New York, as specified in the notice thereto attached, and that I am not attorney for either of the said parties or otherwise interested in the event of said action, that I am not related to either of the parties to said action.

[SEAL.] THOMAS GALVIN,
Notary Public, Rens. Co., N. Y.

STATE OF NEW YORK,
City of Troy, Rensselaer County, Clerk's Office, ss:

I, Allen R. Thompson, Clerk of said County, and also Clerk of the said Courts, being Courts of Record held therein, do hereby Certify, that Thomas Galvin whose name is subscribed to the annexed jurat, was, at the time of the signing the same a Notary Public in and for the said County, duly commissioned and sworn and authorized to administer oaths; that I am well acquainted with the hand writing of the said Notary, and verily believe that the signature to the said jurat is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said County, this 4th day of December A. D. 1902.

[SEAL.] ALLEN R. THOMPSON, *Clerk.*

393 And afterwards to wit: on the 14th day of July 1903, the Court took said evidence and pleadings and the brief of counsel under advisement until the 14th day of November 1903 when the Court rendered his final judgment in said cause which was in words and figures as follows:—

And afterwards to wit: 14 day of November on the same day the plaintiff filed her motion for a new trial, which said motion was in words and figures as follows:—

394 TERRITORY OF OKLAHOMA, *Oklahoma County:*

In District Court Within and for said Territory and County.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY, ANTON H. CLASSEN, ET AL., Defendants.

Motion for New Trial.

Comes now the Plaintiff, Amelia M. Holt and moves the Court to grant her a new trial for the following reasons:

First. Because the decision of the Court is not sustained by any evidence.

Second. Because the decision of the Court is contrary to law.

Third. Because of errors occur-ing at the trial and excepted to by the plaintiff.

Fourth. Because the Court erred in refusing to admit in evidence the deposition of the defendant Anton H. Classen which was duly excepted to at the time by the plaintiff.

Fifth. Because the court erred in not admitting in evidence the deposition of J. H. Everest which was duly excepted to by the plaintiff.

Sixth. The Court erred in admitting incompetent evidence offered by the defendant which was duly excepted to by the plaintiff, at the trial.

Seventh. Because the court erred in refusing to admit in evidence competent and material testimony which was offered by the plaintiff, which was duly excepted to by plaintiff on the trial of this cause.

Eighth. The court erred in refusing to make separate findings of facts and conclusions of law at the time of delivering his decision in this cause which was duly excepted to by the plaintiff.

395 Ninth. Because the court erred in finding that the plaintiff was guilty of laches in the cause and therefore she could not recover.

Tenth. Because the Court erred in finding that the plaintiff was guilty of laches because there was no evidence to support the finding.

Eleventh. Because the Court erred in not finding that there was a conspiracy between the defendants in this cause to cheat and defraud the plaintiff out of the land in controversy, because the testimony all

tends to show and does show said conspiracy and fraud and there is no evidence to the contrary.

J. S. JENKINS,
Attorney for Plaintiff.

Endorsed: Filed Nov. 14, 1903. B. D. Shear, Clerk.

396 And afterward to-wit; on the same day the Court over-ruled the plaintiff's motion for a new trial which said order was included in the general entry of judgment in this cause to all of which the plaintiff excepted as is shown in said journal entry which said journal entry is in words and figures as follows:

397 In the District Court of the Third Judicial District within and for Oklahoma County Territory of Oklahoma.

Number 3021, Journal Entry.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY ET AL., Defendants.

Now on this 13th day of July, A. D. 1903, the same being one of the regular term days of the April term A. D. 1903, of said Court held at Oklahoma City, in Oklahoma County, Territory of Oklahoma, the above entered cause, came on to be heard in open Court before Hon. C. F. Irwin, and the plaintiff appeared by her attorneys J. S. Jenkins and J. L. Brown, and the defendants, Samuel Murphy and A. H. Classen, F. M. Riley, William Overholser, L. L. Land, O. G. Lee and Myrta S. Mitscher appeared in person and by their attorney J. H. Everest and H. H. Howard.

And thereupon the plaintiff submitted evidence and rested and the defendant submitted and rested, and the Court took said case under advisement and by agreement of counsel, written briefs were submitted for both the plaintiff and defendants.

The defendants, George Holt, Minerva Manley, Ida Ransom, Levi Holt, Susan J. Holt, Edith Ransom and Nellie May Holt, failed to appear either in person or by attorney.

And now on this 14th day of November, A. D. 1903, the same being one of the regular term days of September term A. D. 1903, of said Court said cause came on in open Court for judgment, and the Judge of said Court, Hon. C. F. Irwin, having heretofore examined the briefs of counsel for both plaintiff and defendants, and having considered the pleadings and the testimony at the hearing, and being otherwise fully advised in the premises, finds that the plaintiff Amelia M. Holt has failed to sustain the material
398 allegation of her petition and should of right take nothing by said action.

The Court further finds that the defendants, George Holt, Minerva Manley, Ida Ransom, Levi Holt, Susan J. Holt, Edith Ransom, and

Nellie May Holt, having been legally served by publication in said case, proof of which service was filed with the Clerk of said Court on the 15th day of May, 1903, that said defendants last named so served by publication are the children and heirs of Levi Holt, deceased, and that said last named defendants claim some right in and to the South-west quarter, section twenty-seven, township twelve North of Range Three West I. M. (S. W. ¼-27-12 N. 3, W. I. M.) in Oklahoma County, Territory of Oklahoma, being the tract of land involved in this cause, that said last named defendants have wholly failed to answer, demur or otherwise plead to the answer of defendants, or at all, and the Court finds that the defendant A. H. Classen is the owner and in the possession of the West half and the North-east quarter of the said South-west quarter of section twenty-seven township twelve North Range three West I. M. (W. ½" & the N. E. ¼ of said S. W. ¼-27-12-N. 3 W. I. M.) in Oklahoma County Territory of Oklahoma and that neither the plaintiff Amelia M. Holt or the defendants George Holt, Minerva Manley, Ida Ransom, Levi Holt, Susan J. Holt, Edith Ransom, or Nellie May Holt, being all the heirs of Levi Holt, deceased, have any right, equity or interest in and to said tract of said land above described or any part thereof, and that the adverse claims of said last named defendants cast a cloud upon the title, of the said defendant A. H. Classen.

The Court further finds that the defendants F. M. Riley, William Overholser, L. L. Land, Oscar G. Lee, and Myrta S. Mitscher, are the owners and in the possession of the South-east forty (40) of said South-west quarter of section twenty-seven township twelve, North of Range three West I. M. (S. E. 40 of S. W. ¼-27-12-N. 3 W. I. M.) Oklahoma County, Territory of Oklahoma, that the
399 plaintiff and defendants, George Holt, Minerva Manley, Ida Ransom, Levi Holt, Susan J. Holt, Edith Ransom, and Nellie May Holt, being all the heirs of Levi Holt, deceased have no right claim, interest or equity in and to said forty (40 acres last above described or any part thereof, and that said defendants, F. M. Riley, William Ocerholser, L. L. Land, O. G. Lee, Myrta S. Mitschner, are entitled to a degree quieting their title in and to said land as against said heirs of Levi Holt, deceased.

It is therefore considered, ordered and adjudged by the Court, that the plaintiff Amelia M. Holt, take nothing by said action, and that said plaintiff, Amelia M. Holt, pay the costs of this action taxed at — dollars.

It is further considered, ordered and decreed by the Court, that the title of the defendant Anton H. Classen in and to the west half and the North-east of the said South-west quarter of section twenty-seven township twelve North of range three west I. M., (W. ½ & the N. E. ¼ of the said S. W. ¼-27-12, N/3-W-I. M.) in Oklahoma County, Territory of Oklahoma, be and the same is hereby quieted as against the said Amelia M. Holt plaintiff, George Holt, Minerva Manley, Ida Ransom, Levi Holt, Susan Holt, Edith Ransom, and Nellie May Holt, and as against all persons claiming under them or under them since the commencement of this suit.

It is further considered, ordered and adjudged that the title of the defendants F. M. Riley, William Overholser, L. L. Land, O. G. Lee and Myrta S. Mitscher in and to said South-east quarter of the South-west quarter of said section twenty-seven township twelve North of Range three west I. M. (S. E. ¼ of S. W. ¼-27-12 N. 3 W. I. M) Oklahoma County, Territory of Oklahoma, be and the same hereby quieted against the said Amelia M. Holt, George Holt. Minerva Manley, Ida Ransom, Levi Holt, Susan Holt, Edith Ransom, and Nellie May Holt, to which judgment, and each and
400 every part thereof, the plaintiff Amelia M. Holt excepted.

And thereupon, to wit: on the 14th day of November, 1903, the plaintiff Amelia M. Holt, filed a motion for a new trial, and there upon to wit: the said motion for a new trial coming on to be heard before the Court, and the Court having considered said motion and being otherwise fully advised in the premises, finds that said motion is not well taken and should by right be over-ruled and denied, to which ruling, judgment and decision of the Court, plaintiff excepts.

And thereupon the plaintiff asks the Court for time within which to make and serve a case made for the Supreme Court, and the Court thereupon allows the plaintiff ninety (90) days within which to make and serve a case made for the Supreme Court with ten days (10) to the defendants to suggest amendments, said case to be settled by the Court upon five days written notice by either party.

C. F. IRWIN,
Presiding Judge of the Third Judicial District.

Endorsed: 3021. Holt *vs.* Murphy and others, Journal Entry — filed in District Court Oklahoma County, O. T. November 20th, 1903. B. D. Shear, Clerk.

TERRITORY OF OKLAHOMA, *Oklahoma County:*

It is hereby agreed by and between the plaintiffs and defendants to the above cause, that the within case made contains a full and complete record of this cause, and notice of the time and place of settling and signing the same are waived and it is further agreed that the same may be signed by the court and filed as required by law, without further notice and all amendments to the same are hereby waived.

This the 7th day of December, 1903.

J. S. JENKINS,
Attorney for Plaintiff.
401 J. H. EVEREST,
Attorney for Samuel Murphy, A. H. Classen, F. M. Riley, W. L. Overholser, Myrta S. Mitscher, L. L. Land and O. G. Lee.

Filed Feb. 26th, 1904.
BENJ. F. HEGLER,
Clerk Supreme Court.
By JESSIE PARDOE,
Deputy.

402 The foregoing contains a true and correct statement of all pleadings, motions, orders evidence, findings and proceedings upon which judgment was rendered.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

We the undersigned attorneys for defendants in the foregoing suit, certify that the foregoing case was duly served on me this 30 day of November 1903.

J. H. EVEREST,
Attorney for Defendants, A. H. Classen, Samuel Murphy, W. L. Overholser, Myrta S. Mitscher, L. L. Land, O. G. Lee and F. M. Riley.

TERRITORY OF OKLAHOMA, *Oklahoma County, ss:*

This is to certify that the foregoing above case made and the amendments thereto have been duly served in due time, and the amendments thereto duly suggested and the same being duly submitted to me for settlement and signing, as required by law, by the parties to said cause; that the same, as above set forth, and as corrected by me, is true and correct, and contains a full, complete, true, correct and complete statement of all the pleadings, motions, orders, evidence, findings, proceedings and judgments had in such cause; and I hereby settle, allow, certify and sign the same as true and correct, and I hereby order that the Clerk of the District Court, attest the same with the name and seal of said Court, and file the same of record as provided by law.

Witness, my hand at Oklahoma City, the 11th day of February 1904.

[SEAL.] C. F. IRWIN,
Judge of the District Court.

Attest:
. D. SHEAR, *Clerk.*

Filed Feb. 26, 1904. Benj. F. Hagler, clerk Supreme Court, By Jessie Pardoe, Deputy.

403 TERRITORY OF OKLAHOMA, *Oklahoma County:*

Index to Case-made.

AMELIA M. HOLT, Plaintiff,
vs.
SAMUEL MURPHY, A. H. CLASSEN ET AL., Defendants.

(Marginal figures referred to.—Clerk.)

Petition	2 to 6
Demurrer to petition	8
Amended petition	10- 18

Exhibits to amend- petition 19- 37
Exhibit "A" Secretarie's decision of June 12th, 1895..... 19- 27
Exhibit "B" waiver of rights of Holt heirs, June 14th, 1897 28
Exhibit "C" Patent to Samuel Murphy, January 19th, 1898 29
Exhibit "D" Samuel Murphy and wife to Ferdinand Batchelder, July 27th, 1897..... 30- 31
Exhibit "E" Samuel Murphy and wife to Ewers White, Jan. 24, 1898 ..... 32- 33
Exhibit "F" Ferdinand Batchelder to Ewers White, May 12th, 1899 34
Exhibit "G" Ewers White to A. H. Classen, May 13th, 1899 35- 36
Separate answer of A. H. Classen..... 38- 39
Separate Answer of Samuel Murphy..... 41
Order assigning Judge 41½
A. H. Classen motion for judgment on the pleadings..... 42
Samuel Murphy's motion for judgment on the pleadings... 43
Judgment overruling motion for judgment..... 44
Separate amended answer of A. H. Classen..... 46- 50
Exhibits to A. H. Classen's amended answer..... 51- 62
Exhibit "A" Motion to reinstate by Samuel Murphy, April 16, 1896 ..... 51- 52
Exhibit "B" Samuel Murphy's Appeal, Aug. 20th, 1896.. 53- 55
Exhibit "C" Secretarie's decision, January 30th, 1897 56- 58
404 Exhibit "D" Samuel Murphy's Motion for review.. 59- 60
Exhibit "E" Secretarie's decision April 29th, 1897.. 61
Separate amended answer of Samuel Murphy..... 63
Exhibits same as in Classen's amended answer.....
Plaintiff's demurrer to separate amended answer of A. H. Classen 81
Plaintiff's demurrer to separate amended answer of Samuel Murphy 83
Order of Court making new parties defendant..... 85
Reply to the separate amended answer of A. H. Classen.... 87- 90
Reply to the separate amended answer of Samuel Murphy.. 92- 95
Separate Answer of F. M. Riley..... 98
Answer of Myrta S. Mitscher..... 100-101
Reply to answer of Myrta S. Mitscher..... 103-107
Separate Answer of William L. Overholser..... 108-109
Reply to separate answer of William L. Overholser..... 111-114
Separate answer of L. L. Land and O. G. Lee..... 116-117
Reply to answer of L. L. Land and O. G. Lee..... 119-123
Stipulation for reading depositions..... 125
Proceeding at trial..... 127-164
Exhibits and evidence offered at trial..... 164-395
Certificate of Commission of General Land Office..... 164
Filing papers of Ewers White..... 165-172
Levi Holt's discharge from the U. S. Army..... 173
Levi Holt's S. D. S. and power of Attorney..... 174-175
Filing papers of Samuel Murphy..... 176-183
Decision of the Secretary July 21st, 1891..... 184-191
Decision of the Secretary February 25th, 1895..... 192-200

Notice of said decision 201-202
Decision of Secretary on review 203-212
Decision of Secretary January 30th, 1897 ..... 56- 58
Decision of Secretary April 29th, 1897 61
Commissioner's letter to R. R. Dec. 18th, 1897 213
Register Dilley and Receiver Classen letter to Com. June 16, 1897 214
Commissioner's certificates to copies 216
Waiver of rights of Holt heirs by C. W. Ransom ... 217
405 Commissioner's certificate to copies of letter 218
Homestead proof of Samuel Murphy signed by A. H. Classen 219-225
Motion for review of decision of February 25th, 1895 226-227
Holt's answer to motion 228-230
Notice of dismissal of McMicheal appeal July 27th, 1897 .. 231
B. M. Dilley's letter dated July 27th, 1897 232
A. H. Classen letter July 23d, 1897 233
Commissioner's letter July 21st, 1897 234
Commissioner's letter July 16th, 1897 235
B. M. Tilley's letter June 28th, 1897 236
B. M. Tilley's letter June 17th, 1897 237
B. M. Tilley's letter May 17th, 1897 238
Commissioner's letter May 8th, 1897 239
Secretarie's decision April 29th, 1897 240
Commissioner's letter August 10th, 1897 241
B. M. Tilley's letter August 19th, 1897 243
Commissioner's letter December 18th, 1897 244
Letter transmitting record 245-246
Commissioner's letter Oct. 24th, 1901 247
Register's certificate to copies 249
Testimony of Edith Ranson 139-145
Testimony of J. H. Everest 145-153
Testimony of A. H. Classen 153-158
Testimony of B. M. Tilley 158-160
A. H. Classen recalled 160-161
Deposition of W. L. Overholser 250-254
Deposition of defendant Oscar G. Lee 255-257
Deposition of defendant Leondias L. Land 257-261
Deposition of defendant Samuel Murphy 261-263
Deposition of C. W. Ransom 266-283
Deposition of J. H. Wheeler 285-291
Deposition of A. H. Classen 292-309
406 Second deposition of A. H. Classen 310-315
Deposition of J. H. Everest 316-330
Deposition of Amelia M. Holt Oct. 8th, 1902 332-344
Deposition of G. W. Batchelder 343-348
Deposition of Samuel Murphy, Sept. 18th, 1902 294-360
Deposition of Ferdinand Batchelder 361-371
Deposition of George L. Stiles 372-377
Deposition of Amelia M. Holt, Nov. 17th, 1902 379-386
Exhibits to above deposition of Amelia M. Holt 387-393

C. W. Ransom letter to Amelia M. Holt, Nov. 2nd, 1894... 387-388
C. W. Ransom letter to Amelia M. Holt, Feb. 26th, '94.... 389-391
C. W. Ransom letter to Amelia M. Holt..... 392
Deposition of Julia Dunham..... 394-395
Motion for a new trial..... 398-399
Journal Entry 401-404
Waive- of amendments to case made..... 304
Acceptance of service of case made..... 405
Certificates of Judge to case made..... 405

407 Said case made endorsed as follows: 1474—Amelia M. Holt, Plaintiff in error *vs.* Samuel Murphy and A. H. Classen, Defendants in error.—Petition in error and case made.—Filed in District Court, Oklahoma County, O. T. February 13th, 1904. B. D. Shear, Clerk, by Will H. Clark, Deputy.—Filed Feb. 26th, 1904. Benj. F. Hegler Clerk Supreme Court, by Jessie Pardoe, Deputy.

408 And afterwards, on March 1, 1904, there was filed in said cause a Dismissal as to S. E. ¼, S. W. ¼ Sec. 27, Twp. 12 N. R. 3 W. I. M, which said Dismissal reads in words and figures as follows, to wit:

409 In the Supreme Court of the Territory of Oklahoma.

AMELIA M. HOLT, Plaintiff in Error,
vs.
SAMUEL MURPHY ET AL., Defendants in Error.

Dismissal.

Comes now the said plaintiff, Amelia M. Holt, and hereby dismisses said cause in so far as the same relates to the Southeast quarter (S. E. ¼) of Southwest quarter (S. W. ¼) of Section twenty-seven (27) in Township twelve (12) North of Range three (3) West Indian Meridian, in Oklahoma County, Territory of Oklahoma, such dismissal being with prejudice, and at the cost of plaintiff, and an abandonment of all claim to the forty (40) acres above described, but without prejudice as to the claim of plaintiff to the remainder of said quarter section.

AMELIA M. HOLT, *Plaintiff.*
J. S. JENKINS, Their *Attorney.*

STATE OF NEW YORK, *County of Rensselaer, ss:*

Before me, Alvin E. Mambert, a Notary Public, in and for the above named County and State, on this 16th day of February, 1904, personally appeared Amelia M. Holt, Known to me to be the person who executed the above instrument and acknowledged the execution thereof to be her free and voluntary act for the purposes named.

Witness my hand and official seal the date above written.
My Commission expires March 31st, 1904.
[SEAL.] ALVIN E. MAMBERT,
Notary Public, Rens. Co., N. Y.

Endorsed: No. 1474—In the Supreme Court, Oklahoma Territory —Amelia M. Holt, Plaintiff in error, *vs.* Samuel Murphy *et al.*, Defendants in error. Dismissal as to S. E. ¼ S. W. ¼ Sec. 27, Twp. 12 N. R. 3 W. I. M.—Filed March 1, 1904, Benj. F. Hegler, Clerk Supreme Court, By Jessie Pardoe, Deputy—J. H. Everest, Attorney for Samuel Murphy *et al.*, Defendants in error.

410 And afterwards, to wit, on the Sixth day of June, 1904, there was filed in said cause a Motion to Dismiss, which Motion reads in words and figures as follows, to wit:

411 In the Supreme Court of the Territory of Oklahoma.

No. 1474.

AMELIA M. HOLT, Plaintiff in Error,
vs.
SAMUEL MURPHY and A. H. CLASSEN, Defendants in Error.

Motion to Dismiss Appeal.

Comes now the above named defendants in error, Samuel Murphy and A. H. Classen, and moves the court to dismiss the appeal of plaintiff for the reason that plaintiff failed to comply with rule 6 of the rules of practice of the Supreme Court, by serving brief on counsel for defendants in error within 40 days after filing his petition in error, and also failed to comply with said rule by filing said brief in the Supreme Court within 40 days from date of filing pctition in error.

Respectfully submitted,

J. H. EVEREST,
Att'y Defendants in Error.

Service of the above and foregoing motion and the receipt of a copy thereof is hereby acknowledged this 4th day of June, 1904.
J. S. JENKINS,
Attorney Pl'ff in Error.

Filed June 6, 1904.
BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

Endorsed: 1474—In Supreme Court, Oklahoma Territory—Amelia M. Holt, Plaintiff in error, *vs.* Samuel Murphy and Anton H. Classen, Defendants in error—Motion to Dismiss—Filed June 6, 1904, Benj. F. Hegler, Clerk Supreme Court, By Jessie Pardoe, Deputy—J. H. Everest, Attorney for defts. in error.

412 And afterwards, to wit, on the Sixth day of June, 1904, there was filed in said cause a motion to continue, which motion reads in words and figures as follows, to wit:

413 In the Supreme Court of the Territory of Oklahoma, June Term, 1904.

AMELIA M. HOLT, Plaintiff in Error,
vs.
SAMUEL MURPHY ET AL., Defendants in Error.

Motion for Continuance.

Comes now J. S. Jenkins, attorney for plaintiff in error, and moves the court to grant a continuance in this case until the next term of this court, for the reason that affiant has been unable to prepare his brief in this case in the time required by the rulings of this court, on account of his condition in being very nervous and unable to apply himself to the work of preparing his brief, and on account of the condition of his eyes.

Affiant further states, that he is desirous of making an oral argument in this cause at this term of the court, but on account of his health he is unable to do so.

J. S. JENKINS,
Att'y for Plaintiff in Error.

Subscribed and sworn to before me this 4th day of June, 1904.
[SEAL.] L. CASSLEY,
Notary Public.

My Commission Exp. Sept. 24, 1907.

Service of a copy of the above motion is hereby accepted this June 4th, 1904.

J. H. EVEREST,
Att'y for Def'ts in Error.

Filed June 6, 1904.
BENJ. F. HEGLER,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

Endorsed:—1474—Supreme Court—Amelia M. Holt, Plff. in error, *vs.* Samuel Murphy *et al.*, Defts. in error—Motion for a Continuance—Filed June 6, 1904, Benj. F. Hegler, Clerk Supreme Court, By Jessie Pardoe, Deputy.

414 And afterwards, at the June, 1904, Term of said Supreme Court, on the Seventh day of June, 1904, the following proceeding was had in said cause, to wit:

#1474.

AMELIA HOLT, Plaintiff in Error,
vs.
SAMUEL MURPHY and A. H. CLASSEN, Defendants in Error.

Ordered by the Court, that this cause be now taken on record, briefs and motions to dismiss and for continuance.

415 And afterwards, at the June, 1904, Term of said Supreme Court, on the Nineth day of June, 1904, the following proceeding was had in said cause, to wit:

#1474.

AMELIA HOLT, Plaintiff in Error,
vs.
SAMUEL MURPHY and A. H. CLASSEN, Defendants in Error.

Ordered by the Court, that the motions to dismiss and for continuance in this cause be and the same are hereby overruled, and cause taken on record and briefs.

416 And afterwards, at the June, 1904, Term, on the Third day of September, 1904, the following proceeding was had in said cause, to wit:

#1474.

AMELIA HOLT, Plaintiff in Error,
vs.
SAMUEL MURPHY and A. H. CLASSEN, Defendants in Error.

And now this cause comes on for final decision and determination by the Court, upon the record and briefs submitted herein. And the Court having duly considered the same, and being fully advised in the premises, finds: That the judgment of the lower court in this cause should be affirmed, at the cost of plaintiff in error.

It is therefore ordered and adjudged by the Court, that the judgment of the lower court in this cause be and the same is hereby affirmed, at the cost of plaintiff in error.

Opinion by Hainer, J. All the Justices concurring except Irwin, J., who tried the cause below, not sitting.

Which opinion reads in words and figures as follows, to wit.

417 No. 1474.

In the Supreme Court of the Territory of Oklahoma, June Term, 1904.

Filed September 3, 1904.

AMELIA M. HOLT, Plaintiff in Error,
vs.
SAMUEL MURPHY, A. H. CLASSEN ET AL., Defendants in Error.

Syllabus.

1. A homestead entry, valid upon its face, constitutes such an appropriation and withdrawal of the land as to segregate it from the public domain, and, so long as it remains a subsisting entry, precludes it from subsequent entry.
2. A homestead application to enter land already covered by a subsisting homestead entry, can confer no rights whatever upon the applicant.
3. Where an application to enter land already covered by a homestead entry is received by the local land office and rejected, and an appeal is taken from such action, it is not a pending application that will attach on the cancellation of the previous entry, since the appeal cannot operate to create, as a matter of law, any right not secured by the application.
4. Where fraud is relied upon as a basis for equitable relief, and the trial court, after hearing all the evidence, finds that fraud has not been proven, this court will not disturb such finding, unless it is clearly against the weight of the evidence.

Error from the District Court of Oklahoma County.

C. F. Irwin, Trial Judge.

Affirmed.

J. S. Jenkins, for Plaintiff in Error.
J. H. Everest, for Defendants in Error.

Statement of Case.

A brief history of this case in the land tribunal is as follows:

On April 23, 1889, Ewers White made homestead entry number six on the southwest quarter of section twenty-seven, township twelve north, range three west, at the United States land office at Guthrie, Oklahoma. On April 24, 1889, Charley J. Blanchard made homestead application for the same tract of land. On May 1, 1889, Vestal S. Cook made application for the same tract of land. The applications of Blanchard and Cook were rejected because of conflict with White's entry. On April 27, 1889, Blanchard filed

an affidavit of contest, charging that White had entered the Territory of Oklahoma prior to twelve o'clock noon, April 22, 1889, in violation of the Act of Congress approved March 2, 1889, and the President's proclamation issued pursuant thereto. On May 1, 1889, Cook filed an affidavit of contest, attacking White's entry, alleging that he was disqualified to enter said lands, and also alleging that Blanchard was disqualified from entering said lands, for the reason that he had entered upon said lands prior to twelve o'clock noon, April 22, 1889, in violation of the federal law. On July 16, 1889, the cause was tried before the local land office, and the Register and Receiver of said office recommended the cancellation of White's entry, and dismissed the contests of both Blanchard and Cook. All parties appealed from this decision to the commissioner of the general land office; and on March 7, 1890, the decision of the local land office was affirmed.—Blanchard *v.* White *et al.*, 13 L. D. 66. From this decision, within the time required by the rules of practice of the land tribunal, an appeal was taken to the Secretary of the Interior.

On March 11, 1890, Levi Holt, through an agent, made application to the local land office to file a soldier's declaratory statement for the land, which was suspended by the register and Receiver, pending final action on the case of Blanchard *v.* White *et al.*, on appeal from the commissioner of the general land office to the Secretary of the Interior.

418 On November 29, 1890, and while said contests were pending before the secretary of the Interior, White relinquished his homestead entry, and the defendant Samuel Murphy filed his homestead entry.

Holt based his claim in the land tribunal solely on his application filed on March 11, 1890, four days after the decision of the commissioner of the general land office, holding White's entry for cancellation, and before appeal was taken therefrom to the secretary of the interior. Murphy's claim is based entirely upon his homestead entry made November 29, 1890, on the filing of White's relinquishment.

It further appears that on June 3, 1889, and while White's homestead entry was still intact, William T. McMichael entered upon said tract, with a view of establishing residence and settlement thereon. On July 21, 1889, McMichael made application at the local land office to enter said tract of land, which application was rejected by the local office for being in conflict with White's homestead entry. On August 31, 1889, McMichael filed a contest or protest, alleging that he had made settlement on the land in question on June 3, 1889; that he had lived there with his family until August 2, 1889, when he was ejected therefrom by the military authorities, at the instance of White; and he claimed that his rights were superior to those of White, Blanchard and Cook, all of whom he alleged were disqualified, by reason of having entered the Territory during the prohibited period.

On February 15, 1892, a hearing was had before the local land office between McMichael and Murphy. The local land office de-

cided the case in favor of Murphy and against McMichael, and the latter appealed to the commissioner of the general land office. On January 18, 1893, the commissioner of the general land office affirmed the decision of the local office. From this decision McMichael appealed to the Secretary of the Interior. On February 25, 1895, the Secretary of the Interior affirmed the decision of the general land office, but held that Murphy's homestead entry was subject to the rights of Levi Holt, by virtue of his having made application to file his soldier's declaratory statement on March 11, 1890.—See McMichael *v.* Murphy et al., 20 L. D., 535; see also 24 L. D. 431.

Pending the contest proceedings Levi Holt died, and the subsequent proceedings were had in the name of his heirs. The contest proceedings were finally closed in the land tribunal on April 29, 1897. On June 14, 1897, C. W. Ransom, who, it appears was attorney of record of Levi Holt and his heirs, filed a written waiver of the right of the heirs to perfect their rights and make homestead entry upon said tract of land.

Thereafter Murphy made final proof, and a patent was issued to him on January 19, 1898.

On the 16th day of September, 1901, Amelia M. Holt, plaintiff in error, commenced her action in the district court of Oklahoma County against Samuel Murphy and A. H. Classen, defendants in error, to declare a resulting trust, and that the defendants be decreed to hold the legal title in trust for the use and benefit of the plaintiff.

To the plaintiff's petition, the defendants interposed a demurrer, on the ground that the petition did not state facts sufficient to constitute a cause of action, which demurrer was overruled, and exception reserved by the defendants. Thereafter each of the defendants filed a separate answer, consisting of a general denial, and the defendant Classen further alleged that he was an innocent purchaser, for value, of the land in controversy, and that he had no notice or knowledge of any claims or equities of the plaintiff. The case went to trial on its merits, to the court, without the intervention of a jury, and the court found the issues in favor of the defendants and against the plaintiff, and rendered judgment in accordance therewith. A motion for a new trial was duly filed was considered and overruled by the court, an exception reserved by the plaintiff, and the cause is brought here by the plaintiff for review.

419 Opinion of the Court by HAINER, *J.*:

The right of the plaintiff in error to enter the land in controversy is based upon the application of Levi Holt, filed March 11, 1890, four days after the decision of the commissioner of the general land office holding White's entry for cancellation, and before appeal was taken therefrom. However, White appealed from the decision of the commissioner of the general land office to the secretary of the Interior within the time required by the rules of practice, and hence his homestead entry was not cancelled pending such appeal, and therefore his entry remained intact upon the records of the land

office until he voluntarily relinquished on November 29, 1890, more than six months after Holt had made application to the local land office to file his declaratory statement.

In the case of McMichael *v.* Murphy *et al.*, 20 L. D. 535, the Secretary of the Interior held that the application of Holt to enter the land, made after the date of the decision of the commissioner of the general land office, and within the time allowed for appeal, should be received, but not placed of record until after the time for appeal had expired, and the rights of the entryman on such appeal determined by the department. In other words, that such application should be received subject to the rights of the entryman on the appeal. And in enunciating this doctrine, the secretary followed the former rulings of the department in the cases of John H. Reed, 6 L. D. 563, and Henry Gauger, 10 L. D., 221.

In the case of Cowles *v.* Huff, 24 L. D. 81, decided January 30, 1897, the Secretary of the Interior decided that:

"An application to enter should not be received during the time allowed for appeal from a judgment canceling a prior entry of the land applied for; nor the land so involved held subject to entry, or application to enter, until the rights of the entryman have been finally determined."

And in this case, the doctrine announced in the case of Henry Gauger, 10 L. D. 221, and other cases following it, was expressly overruled.

In Cowles *v.* Huff, *supra,* the secretary uses the following language:

"In the case at bar, Huff made his application to enter while Moore's entry was still in existence, and continued to exist for over a year and a half thereafter. His application was rejected, and he appealed. The question is, whether he acquired any rights under his application under the law, or rulings of the department. This question can best be determined by reference to the rulings of the department and courts.

The Department has repeatedly held that an entry segregates the land covered thereby, and so long as such entry exists, it precludes any other disposition of the land.—Whitney *v.* Maxwell, 2 L. D. 98; Schrotberger *v.* Arnold, 6 L. D., 425; Allen *v.* Curtis, 7 L. D., 444; James *v.* Forward, 8 L. D., 528; Russell *v.* Gerold, 10 L. D., 18; Swims *v.* Ward, 13 L. D., 686; Hanscom *v.* Sines *et al.*, 15 L. D., 27; Faulkner *v.* Miller, 16 L. D., 130.

The courts have held the same view.—Witherspoon *v.* Duncan, 4 Wall., 210; Hastings and Dakota R. R. Co. *v.* Whitney, 132 U. S., 357; Starr *v.* Burk, 133 U. S., 541, 548.

If the land covered by a substituting entry is not subject to disposition, it follows that an application to enter such land confers no rights whatever upon the applicant. If such application shall be rejected, and an appeal be taken from such action, it is not a pending application that will attach on the cancellation of the previous entry, for the appeal cannot operate to create any right not secured by the application itself. See Patrick Kelley, 11 L. D., 326; Goodale *v.* Olney (on review), 13 L. D., 498; Maggie Laird, *Id.*, 502;

281

Holmes *v.* Hockett, 14 L. D., 127; Swanson *v.* Simmons, 16 L. D., 44; Mills *v.* Dally, 17 L. D. 345; Cook *v.* Villa (on review), 19 L. D. 442; Walker *v.* Snider (on review) *Id.,* 467; Gallagher *v.* Jackson, 20 L. D. 389; McMichael *v.* Murphy *et al.* (on review) *Id.,* 535; McCreary *v.* Wert *et al.,* 21 L. D., 145:

In view of these authorities, it is held that Huff did not acquire any rights, either by his application to enter, or by his appeal."

In McMichael *et al. v.* Murphy, 12 Okla., 155, this court said:

"A homestead entry, valid upon its face, constitutes such an appropriation and withdrawal of the land as to segregate it from the public domain, and precludes it from subsequent homestead entry or settlement until the original entry is cancelled or declared forfeited; in which case the land reverts to the government as a part of the public domain, and becomes again subject to entry upon the land laws of the United States."

And the same rule was followed in Hodges *vs.* Colcord *et al.,* 12 Okla., 313. And this doctrine was also upheld by the recent decision of the Supreme Court of the United States, affirming the decision in the case of Hodges *v.* Colcord, 193 U. S., page 192.

Applying these decisions to the case at bar, it follows that, since Holt made his application to *to* enter said tract of land while White's homestead entry was intact, and remained so for more than six months thereafter, Holt or his heirs could acquire no rights whatever by virtue of his application.

But it is contended by the plaintiff in error that the defendants Murphy and Classen had entered into a fraudulent conspiracy with C. W. Ransom to deprive the heirs of Holt of the right of perfecting the application which had been made by the agent of Levi Holt on March 11, 1890. While we do not deem this contention necessary to the determination of the cause it is sufficient to say that the district court heard the evidence offered on behalf of the plaintiff and the defendants, and found for the defendants.

It is the settled rule of this court that where a controverted question of fact is submitted to the court, and the court, after hearing the evidence, makes a finding thereon, and the evidence reasonably sustains such finding, it will not be disturbed by this court.

In Ellison *v.* Beannabia, 4 Okla., 347, in passing upon this question, the court said:

"Under the Code of Civil Procedure, the court now hears oral testimony in chancery cases, and like a jury, considers the witnesses, observes their intelligence and capacity, their fairness or bias, their manner and characteristics, and has thus opportunities for judging of the value of the testimony, such as this court cannot have. The rule is, therefore, here adopted, as in other states which have the same practice act, that a finding of fact by the court is equivalent to a verdict by a jury; and if there is testimony to support the material allegations of the petition, this court cannot disturb the finding and judgment even though the finding of fact by the trial court might be contrary to the judgment of the appellate court. (Beaubieu *et al. v.* Hindman, 37 Kan. 227; Mulhall *v.* Mulhall, 3 Ok. 252,

41 Pac. Rep., 577; Ruth *v.* Ford, 9 Kan. 17; Beal *v.* Codding, 32 Kan. 107; K. P. Railway Co. *v.* Kunkel, 17 Kan. 145, Walker *v.* Eagle Mfg. Co., 8 Kan. 397; Perea *v.* Barclay (N. Mex.) 27 Pac. Rep. 507)."

In McKennon, Admr., *v.* Pentecost, 8 Okla., 117, the court said:

"Where an issue of fact is tried by a court without a jury, and a general finding is made upon such issue by the court, upon oral testimony, such finding is a finding of every special thing necessary to be found to sustain the general finding, and, if there be any evidence to sustain such finding is conclusive upon this court upon all disputed and doubtful questions of fact."

See also Craggs *et al. v.* Earls, 8 Okla., 462.

In Overstreet and Rock Island Implement Co. *v.* Citizens Bank, 12 Oklahoma, 383, the court said:

"Where fraud is relied upon as the basis for equitable relief, and the trial court, after hearing the evidence, finds that fraud has not been established, the appellate court will not disturb such finding, unless it is clearly against the weight of evidence."

421 In our opinion, the district court was warranted in finding that the allegations of fraud in the petition were not sustained by the evidence.

We therefore hold that;

1. A homestead entry, valid upon its face, constitutes such an appropriation and withdrawal of the land as to segregate it from the public domain, and, so long as it remains a subsisting entry, precludes it from subsequent entry.

2. A homestead application to enter land already covered by a subsisting homestead entry, can confer no rights whatever upon the applicant.

3. Where an application to enter land already covered by a homestead entry is received by the local land office and rejected, and an appeal is taken from such action, it is not a pending application that will attach on the cancellation of the previous entry, since the appeal cannot operate to create, as a matter of law, any right not secured by the application. And

4. Where fraud is relied upon as a basis for equitable relief, and the trial court, after hearing all the evidence, finds that fraud has not been proven, this court will not disturb such finding, unless it is clearly against the weight of the evidence.

It follows that the plaintiff failed to allege or prove a cause of action, and the judgment of the district court is therefore affirmed. All the justices concurring, except Irwin, J., who tried the case in the court below, not sitting, and Burwell, J., who took no part in this decision.

422 And on September 22, 1904, plaintiff in error filed a petition for rehearing in said cause; and afterwards, to wit, December 31, 1904, plaintiff in error filed a second or amended petition for rehearing in said cause, which said petitions for rehearing read in words and figures as follows, to wit:

1474.

423 Filed Sep-. 22, 1904. Benj. F. Hegler, Clerk Supreme Court, By —— ——. Deputy.

In the Supreme Court of the Territory of Oklahoma.

AMELIA M. HOLT, Plaintiff in Error,
vs.
SAMUEL MURPHY, A. H. CLASSEN, Defendants in Error.

Petition for a Rehearing.

Comes now the plaintiff in error, and prays the court to grant her a new hearing in the above entitled action for the following reasons:—

1st. The court observed that the Holt application was received by the local office and suspended according to the rule in force in the Guager case, 10 L. D. 221, but that that case was overruled by the case of Cowles *vs.* Huff 24, L. D. 31. The court overlooked the case of German Iron Co. *vs.* James *et al.* 32 C. C. A. 348, in which it was held that neither the Secretary of the Interior
424 nor the Commissioner of the General Land Office, has power to make a retroactive decision abrogating rules of the Land Department. I want to call the attention of the court to the fact that Holt's application was suspended, not rejected, and that the suspension was made in accordance with the rule of the land office then in force, and the fact that the rule was afterwards amended, and would not affect Holt's right.

2nd. The court overlooked the fact that the case of
Cowles *vs.* Huff, L. D. 81,

was decided Jan. 30th 1897 and that the final decision by the Secretary of the interior, in the case of Holt *vs.* Murphy *et al.* was rendered April 29th 1897, nearly three months after the decision of Cowls *vs.* Huff, above refer-ed to, showing conclusively that the Secretary understood, and had in view, the rule of law, that the Secretary could not make a new rule having retroactive effect.

The court overlooked the fact that the rule of the department, till Jan. 30th 1897, was that the decision of the Commissioner was a final decision, and at once threw, the land involved open to entry.

McMichael *vs.* Murphy, 20 L. D. 147,
J. H. Reed 6 L. D. 563,
425 Henry Guager 10 L. D. 221,
Thomas Rathburn 12 L. D. 243.
Perrott *vs.* Connick 13 L. D. 589.

On the 30th day of Jan. 1897, Cowles *vs.* Hoff 24 L. D. 81, was decided. setting up a different rule. This last decision could not affect Holt's vested rights.

3rd. The court overlooked the fact that an application to enter

is equivalent to an actual entry, so far as the rights of the entryman *is* concerned.

Goodall *vs.* Olney 12 L. D. 324,
Samuel J. Hayes 12 L. D. 645.
McMichael *vs.* Murphy 20 L. D. 535.

Consequently when White's entry was cancelled, Holt's rights attached, as has been repeatedly held by the rule in force at that time.

4th. The plaintiff would respectfully call the attention of the Court to the cases of

Bohall *vs.* Dill, volume 5 Supreme Court Reporter 782,
Duluth and O. R. R. Co. *vs.* Roy, volume 19 Supreme Court Reporter 549.

426 5th. The plaintiff in error would respectively call the court's attention to pages 5 to 11 of her brief, and the pages of the record therein refer-ed to on the question of fraud.

6th. The attention of the court is respectfully called to the case of Hodges *vs.* Colcord, 193, U. S., 192.

That is not in point as in that case the contestant was qualified to enter the land and the court held that his rights attached by reason of the contest. The Court held that Gayman's entry was void as to Gayman. In the case at bar the entryman and all the contestants were disqualified. Hence White's entry was void, and the contestants acquired no rights by reason of their contests. Murphy was not a contestant hence he acquired no rights and Holt's application had not been rejected at the time of White's relinquishment. See German Iron Co. *vs.* James, *et al.*, 32, C. C. A., 348 and authorities there cited.

All of which is respectfully submitted.

JOHN S. JENKINS,
Attorney for Plaintiff in Error.

427 Filed Dec. 31, 1904. Benj. F. Hegler, Clerk Supreme Court, By —— ——, Deputy.

1474.

In the Supreme Court of the Territory of Oklahoma.

AMELIA M. HOLT, Plaintiff in Error,
vs.
SAMUEL MURPHY, A. H. CLASSEN, Defendants in Error.

Petition for a Rehearing.

Comes now the plaintiff in error, and prays the court to grant her a new hearing in the above entitled action for the following reasons:—

1st. The court observed that the Holt application was received by the local office and suspended according to the rule in force in

the Guager case, 10 L. D. 221, but that that case was overruled by the case of Cowles *vs.* Huff 24, L. D. 31. The court overlooked the case of German Iron Co. *vs.* James *et al.* 32 C. C. A. 348, in which it was held that neither the Secretary of the Interior nor
428 the Commissioner of the General Land Office, has

Page 6 of defendants' brief states that White had appealed at the time Holt filed his application. This is a mistake. White appealed after said application was filed. See Decision of McMichael *vs.* Murphy *et al.*

power to make a retroactive decision abrogating rules of the Land Department. I want to call the attention of the court to the fact that Holt's application was suspended, not rejected, and that the suspension was made in accordance with the rule of the land office then in force, and the fact that the rule was afterwards amended, would not affect Holt's right.

2nd. The court overlooked the fact that the case of
Cowles *vs.* Huff, L. D. 81,

was decided Jan. 30th 1897 and that the final decision by the Secretary of the Interior, in the case of Holt *vs.* Murphy *et al.* was rendered April 29th 1897, nearly three months after the decision of Cowls *vs.* Huff, above referred to, showing conclusively that the Secretary understood, and had in view, the rule of law, that the Secretary could not make a new rule having retroactive effect.

The court overlooked the fact that the rule of the department, till Jan. 30th 1897, was that the decision of the Commissioner was a final decision, and at once threw, the land involved open to entry.

McMichael *vs.* Murphy, 20 L. D. 147,
J. H. Reed 6 L. D. 563,
429 Henry Guager 10 L. D. 221,
Thomas Rathburn 12 L. D. 243.
Perrott *vs.* Connick 13 L. D. 589.

On the 30th day of Jan. 1897, Cowles *vs.* Hoff 24 L. D. 81, was decided setting up a different rule. This last decision could not affect Holt's vested rights.

3rd. The court overlooked the fact that an application to enter is equivalent to an actual entry, so far as the rights of the entryman *is* concerned.

Jones *vs.* Infielder 14 L. D. 373.
Goodall *vs.* Olney 12 L. D. 324,
Samuel J. Hayes 12 L. D. 645.
McMichael *vs.* Murphy 20 L. D. 535.
N. H. Dahl *vs.* Martin Simon, June, 1904; not reported see certified copy.

Consequently when White's entry was cancelled, Holt's rights attached, as has been repeatedly held by the rule in force at that time.

4th. The plaintiff would respectfully call the attention of the Court to the cases of

Bohall *vs.* Dill, volume 5 Supreme Court Reporter 782,

Duluth and O. R. R. Co. *vs.* Roy, volume 19 Supreme Court Reporter 549.

430 5th. The plaintiff in error would respectively call the court's attention to pages 5 to 11 of her brief, and the pages of the record therein refer-ed to on the question of fraud.

6th. The attention of the court is respectfully called to the case of Hodges *vs.* Colcord, 193, U. S., 192.

That is not in point as in that case the contestant was qualified to enter the land and the court held that his rights attached by reason of the contest. The Court held that Gayman's entry was void as to Gayman. In the case at bar the entryman and all the contestants were disqualified. Hence White's entry was void, and the contestants acquired no rights by reason of their contests. Murphy was not a contestant hence he acquired no rights and Holt's application had not been rejected at the time of White's relinquishment. See German Iron Co. *vs.* James, *et al.*, 32, C. C. A., 348 and authorities there cited.

All of which is respectfully submitted.

JOHN S. JENKINS,
Attorney for Plaintiff in Error.

Service of a copy is hereby acknowledged this Dec. 28, 1904.

J. H. EVEREST,
Att'y Def'ts in Error.

431 And afterward at the January, 1905 Term of said Supreme Court, on the nineth day of January, 1905, the following proceeding was had in said cause, to wit:

#1474.

AMELIA HOLT, Plaintiff in Error,
vs.
SAMUEL MURPHY, Defendants in Error.

And now this cause comes on for determination by the Court upon the petition for a rehearing of the same.

And the Court having duly considered the same, and being fully advised in the premises, finds: That the petition for rehearing should be denied.

It is therefore ordered and adjudged by the Court, that the petition for rehearing herein be and the same is hereby denied.

432 In the Supreme Court of the Territory of Oklahoma.

UNITED STATES OF AMERICA, *Territory of Oklahoma, ss:*

Certificate.

I, Benj. F. Hegler, Clerk of the Supreme Court of the Territory of Oklahoma, do hereby certify that the foregoing 431 pages, numbered from 1 to 431, inclusive, are a true and complete transcript of the record and all proceedings in said Supreme Court in the case of Amelia Holt, Plaintiff in error, *vs.* Samuel Murphy *et al.*, Defendants in error, as the same remain upon the files and records of said Supreme Court.

In Testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the City of Guthrie, this 23rd day of June, 1906.

[Seal Supreme Court, Territory of Oklahoma.]

BENJ. F. HEGLER,
Clerk Supreme Court of the Territory of Oklahoma.

Endorsed on cover: File No. 20,300. Oklahoma Territory supreme court. Term No. 335. Amelia M. Holt, appellant, *vs.* Samuel Murphy, Anton H. Classen, Frank M. Riley, *et al.* Filed July 5th, 1906. File No. 20,300.

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APPELLANT'S BRIEF.

Supreme Court of the United States

October Term, 1907.

No. 61.

AMELIA M. HOLT, *Appellant*,

vs.

SAMUEL MURPHY, ANTON H. CLASSEN, *et al.*,

Appeal from the Supreme Court of Oklahoma Territory.

JOHN S. JENKINS,
JOHN B. COTTON,
WM. FRYE WHITE,
For Appellant.

Supreme Court of the United States

October Term, 1907.

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AMELIA M. HOLT, *Appellant,*

vs.

SAMUEL MURPHY, ANTON H. CLASSEN, *et als.*

Appeal from the Supreme Court of Oklahoma Territory.

STATEMENT OF CASE.

This is an appeal from the Supreme Court of the Territory of Oklahoma. The original petition was brought in the District Court of Oklahoma County, the 16th day of September, 1901, by Amelia M. Holt against Samuel Murphy and Anton H. Classen. The prayer of the petition was that the defendants might be declared to hold the legal title to the S. W. ¼-27-12-3-W. Indian M. O. T. in trust for the plaintiff. The facts upon which the plaintiff based her claim to the relief prayed, were these: On the 11th day of

March, 1890, her husband, Levi Holt, now deceased, being a citizen of the United States and a veteran of the Civil War, filed in the local Land Office of Oklahoma a so-called soldier's declaratory statement and application to make homestead entry in the above-mentioned land.

Four days before the filing of Holt's statement and application, to wit: on the 7th day of March, 1890, the Commissioner of the General Land Office had finally decided a contest involving the same land between one White, one Blanchard and one Cook, and had held that the entry made by White was fraudulent, that Blanchard and Cook had derived no interest in the land by their contest, all three having entered Oklahoma Territory before noon of April 22, 1889, and White's entry was held for cancellation, and the decision noted on the records of the local office.

In conformity with an established rule of the Land Department, the Receiver of the local Land Office accepted Holt's statement and application to enter and suspended it, pending the time allowed by the rules of the Department within which White and the contestants, Blanchard and Cook, might perfect an appeal and until an appeal if perfected should be decided.

Seasonably White, Blanchard and Cook appealed, and on November 29, 1890, while the said appeal was still pending, White relinquished his rights, if any he had, and Samuel Murphy, the defendant, was allowed by the local Land Office of Oklahoma, to make a homestead entry upon the land in question. Murphy's entry was contested by McMichael. Holt's application was then rejected and Holt appealed, insisting that White's entry having been held fraudulent and passed for cancellation, that upon White's relinquishment, his, Holt's, application to enter should immediately have been relieved from suspension and his application to enter placed of record, and that Murphy should

not have been allowed to make entry upon White's relinquishment.

Upon the contest and appeals thus instituted having been consolidated, lengthy proceedings were had in the Land Department before the Commissioner of the General Land Office and the Secretary of the Interior, which resulted in a final decision by Secretary Hoke Smith, June 12, 1895, which decision was reaffirmed after numerous rehearings, on April 29, 1897. In this decision he held that Holt's application to enter was properly received and suspended, pending White, Blanchard and Cook's right of appeal and determination of appeal if taken. The decision further held, that upon White's relinquishment it was the duty of the local Land Office to place Holt's application to enter of record. That Murphy received no rights from his entry upon White's relinquishment; that Holt, and in his place upon his death, his heirs, had a preference to perfect his entry in accordance with law.

That at the time this decision was rendered plaintiff was living in the State of New York and that she was never informed either by the Department or by C. W. Ransom, her attorney, or in any other way, until about August, 1901, that such a decision had been rendered and that she ever had any rights to perfect the entry of her husband in accordance with law.

Plaintiff alleged that on the 14th of June, 1897, Ransom, plaintiff's attorney, filed in the local Land Office a waiver of the rights of the plaintiff to perfect the entry of her deceased husband in accordance with law, and that this alleged waiver was made without her knowledge and without authority from her in furtherance of and as a part of a conspiracy entered into between the said Ransom, her attorney, and Murphy and Classen, the defendants, to deprive her of her right to perfect the entry of her husband in accordance with law.

The defendant's answer denied the fraud and conspiracy alleged and set up that Holt, and through him the plaintiff, never obtained any right to or interest in the land in question by the filing of his statement and application on March 11, 1890, or by reason of the decision of Secretary Smith on June 12, 1895, on the contest referred to above.

Classen further answered that he was an innocent purchaser for value of the property in question.

On the petition and answer and evidence produced by both parties the District Court of Oklahoma County on the 13th day of July, 1903, entered a decree dismissing the plaintiff's petition and quieting title to various portions of a part of the tract in Overholser, Land, Lee and Mitsher, who had been made parties defendant over plaintiff's objection during the proceedings in the District Court.

From this decree the plaintiff appealed to the Supreme Court of Oklahoma Territory.

On September 3, 1904, the Supreme Court of Oklahoma Territory rendered its decision affirming the decree of the Court below and from its decision the plaintiff appeals to this Court.

The Court will notice that the term "Holt heirs" is used throughout this case, both in the Land Department and in the courts. We only desire to call the Court's attention to the fact that the words as here used are not used in their technical sense but rather to designate the parties entitled to the rights under the Statutes. Sec. 2307 and 2291-2292, Revised Statutes, provides that the widow shall come into the rights of the husband upon his death and that his heirs (used in the technical sense) shall come to those rights where there is no widow. The Holt heirs, in the technical sense, have no interest in this suit under the statutes and claim none. See McCune vs. Essig, 199 U. S. 382.

Specifications of Error.

1. The court below erred in holding and deciding as matter of law, that the filing of Levi Holt's soldier's declaration statement and application to enter after the entry of record in the records of the local Land Office of a judgement of the Commissioner of the General Land Office, holding the prior entry of White invalid, created no preference right of entry in Holt, although his filing had been received by the local Land Office and suspended, pending White's and his contestant's right of appeal, in accordance with the settled practice and rule of the General Land Office in force at the time and for a long time thereafter.

2. The court below erred in not holding and deciding as matter of law, that upon White's relinquishment of his entry, pending his appeal from the judgment of the Commissioner of the General Land Office holding his entry void and for cancellation, the suspended application of Levi Holt became a subsisting entry.

3. The court below erred as a matter of law in not recognizing the principle of *stare decisis,* in respect to the rights of Holt, because the rule of practice of the General Land Office which allowed the receipt of applications by the local Land Office and their suspension pending right of appeal in cases where a decision had been made holding a prior entry for cancellation; a long line of decisions in the General Land Office and Interior Department, and in particular the decision of Secretary Smith in the contest involving the rights of Holt, White, McMichael and Murphy, had established a rule of property and rights of property had vested which should not be disturbed, even though the rule of practice of the Department was subsequently changed.

4. The court below erred in holding as matter of law that it was not necessary to the determination of the cause to determine whether Murphy and Classen had entered into a fraud-

ulent conspiracy with Ransom, plaintiff's attorney, to deprive her of her rights to perfect the entry made by her husband, Levi Holt.

5. The court below erred in holding and deciding that the plaintiff failed to either allege or prove a cause of action.

6. The court below erred in holding on the evidence before it, that Classen and Murphy did not enter into a conspiracy to defraud the plaintiff as alleged in her petition.

7. The court below erred in holding that Classen was an innocent purchaser for value.

8. The court below erred in not admitting and considering in evidence the depositions of defendants, Classen and J. H. Everest.

ARGUMENT.

I.

Specifications of errors 1, 2 and 3 raise the general question whether Holt or his wife, the plaintiff, upon his death, obtained a property right which this court is bound to recognize and protect, by filing a soldier's declaratory statement and application to enter public land at a time when there was noted of record in the local Land Office a final decision of the Commissioner of the General Land office, holding a prior entry void and for cancellation and before appeal by such prior entryman; by the receipt of such application by the local Land Office and its suspension pending the right of the prior entryman and his contestants to appeal from the decision referred to, such receipt and suspension having been accomplished in conformity to a long established rule of the Department and numerous decisions of the Commissioner of the General Land Office and Secretary of the Interior; and by the decision of the Secretary of the Interior holding such filing, receipt and suspension lawful and proper and

declaring Holt or his wife upon his death, entitled to perfect his entry.

The answer to this question in the negative is determinative of the plaintiff's rights in this court, for if she never had a right in the land, no fraud could be committed against her in respect to it.

In approaching the argument on the proposition we wish to state that we recognize fully the decisions of this court, of which there are many, which hold that an entry of public land valid upon its face segregates the land from the public domain and prevents a lawful subsequent entry so long as such prior entry continues as a valid subsisting entry.

We refer to such cases as Hodges vs. Colcord, 193 U. S. 192, and McMichael vs. Murphy 197, U. S. 304 (this case involves the same land as in the case at bar and Murphy is the defendant here).

We do not combat the rulings of the court in this line of cases. We do, however, intend to differentiate them from the case at bar, and show that they do not form precedents for its decision.

By the Statutes of the United States the Public Land is placed under jurisdiction of the Interior Department and that Department is entrusted with authority to make all rules and regulations not inconsistent with law, for the management and control of such lands. Under this authority, the Commissioner of the General Land Office and the Secretary of the Interior constitute a court for the determination of all questions arising under the land laws, and the rules and regulations in respect to the execution thereof, made by the Land Department.

This court has over and again held the judgments of the Land Department on all questions of fact to be conclusive upon the courts, and its conclusions of law to be subject to respect and subject to reversal only when clearly erroneous.

Johnson vs. Towsley, 13 Wall. 72, is the leading case. In United States vs. Moore, 95 U. S. 760, p. 763, which is cited with approval in Hastings, etc., R. R. Co. vs. Whitney, 132 U. S. 357-366, this court said:

> "The construction given to a statute by those charged with the duty of executing it is always entitled to a most respectful consideration and ought not to be reversed without cogent reasons. The officers are usually able men and masters of the subject."

The court approaches this case with a decision before it made by the Secretary of the Interior, involving the plaintiff's rights in the land at issue, in which he finds certain facts and reaches certain conclusions of law. McMichael vs. Murphy, *et al.*, 20 L. D. 147 and 535.

This decision recognizes the rule that an entry to the public land segregates it from the public domain and that while it subsists as a valid entry the land is not subject to subsequent entry. This decision holds as matter of law that the decision of the Commissioner of the General Land Office, *"holding an entry for cancellation is final so far as that tribunal is concerned and at once throws the land involved open to entry."* And in aid of this conclusion the Secretary says this has been held in numerous decisions, notably the cases of Reed 6 L. D., 563; Henry Gauger 10 L. D., 221; Thomas Rathbone 12 L. D., 243, and other cases.

The decision further recognizes that the only effect of a right to appeal is to suspend the execution of the judgment pending the time allowed for appeal and until the appeal, if taken, is decided. An appeal does not result in a reversal of the judgment below. In other words, the result is perfectly analagous to the position of judgments in the courts.

The decision further states that in such cases the Depart-

ment early established a rule, which was followed in this case, that provides:

> "That an application to enter, made after the date of judgment and within the time allowed for appeal should be received, but not placed of record until the time for appeal has expired or the rights of the entryman on appeal have been determined by this Department."
>
> See p. 21, Record.

This rule was reasonable and affected no rights. The world knew of the judgment when entered of record and all men had an equal chance to make application to enter. There was no opportunity for fraud and the receipt and suspension worked no prejudice toward the person having the right of appeal. The rule thus fixed was first handed down in the case of Reed *supra*, and was followed in the other cases referred to. The Reed case was decided in 1888.

If the effect of a judgment and its record as held by the Land Department is to make the land in question again subject to entry, it will not be disputed, we think, that it was clearly within the authority of the Department to make any rule for the guidance of its local officers as to how and in what manner they should treat the first application to enter made after such judgment.

If the rule made does not conflict with some statute or is not unreasonable, it is a good rule.

By the promulgation of this rule and its recognition and application through adjudged cases, a rule of property had become established, and inchoate property rights which are subject to protection by the courts, resulted, where the conditions called for by the rule were present.

This being so, the courts ought to recognize the principle of *stare decisis* in respect to such a rule and ought not to dis-

regard rights attaching while it was the law of the tribunal which had jurisdiction to determine them.

All men interested in the public lands knew what the law was as laid down by the Department; attorneys advised as to the rights relying upon the rule.

If the principle of *stare decisis* ought to apply to the conditions existing as the result of this rule, then the case of Cowles vs. Huff (28 L. D.) which in terms laid down a new rule in respect to the subject matter, and over-ruled the previous cases which had followed the old rule, including the McMichael vs. Murphy case, ought not to be held to have had any effect upon the rights of the plaintiff and ought not to be used as a standard by which to judge the question as to whether the plaintiff enjoyed property rights which ought to be protected.

The Cowles vs. Huff case was decided January 30, 1897, and Holt's rights were settled by the decision of June 12, 1895.

The case of Germania Iron Company vs. James, decided by the Circuit Court of Appeals, 8th Circuit, in October, 1898, and reported in 89 Fed. 811, is instructive at this point. In this case the Secretary of the Interior decided a contest involving the public land and notified, in the usual course, the local office of such decision. There was in force in the Department a rule and regulation which provided that no decision cancelling an entry should take effect as a release of such lands and a restoration of them to the public domain until such decision had been communicated to the local office and noted upon its records. The decision of cancellation was noted before the opening of the local office for business on the morning of February 23, 1889. At the opening for business Hartman applied to enter land and his application was accepted and allowed. At five o'clock on the afternoon of the day on which the Secretary rendered his decision cancelling the prior entry, but before it had been noted

by the local office, James, the defendant, applied to enter the land in question. His application was rejected upon the ground that the land was still withdrawn from entry by the prior entry, the decision of the Secretary not having been yet noted of record. A contest then arose, upon which the Secretary in 1894, decided that although Hartman was the first person to make application to enter the land after the decision cancelling the prior entry had been communicated to the local office and there entered of record, yet the attempted entry of James out of office hours and before the decision cancelling the prior entry had been received by the officers and noted, was proper and effectual, upon the theory that the cancellation dated from the time the decision was rendered and not from the date of its record in the local office.

In an action brought to charge James with a trust in favor of the Germania Iron Company, the plaintiff, Sanborn, Judge, speaking for the court, held that an established rule of practice of the Land Department which provided that after a decision by the Secretary has been made, cancelling an entry of public lands, no subsequent entry of such lands could be made until the decision has been officially communicated to the local land officials and a notification of the cancellation made on their records, is a proper, just and reasonable rule and in accordance with the policy of Congress, which makes the local offices the place for the settlement of all claims under its laws; as is also a rule that application for entry can only be received by the local officers at their offices and during the prescribed office hours; and the application for entry made and received in accordance with such rules * * * *gives the entryman a vested right* in the land of which he *can not be deprived by the subsequent decision of the Department giving preference to an application made in violation of its rules.*"

We say in the case at bar that the Department had established a rule as the result of a long line of decisions that when the Commissioner of the General Land Office rendered a decision holding an entry void and for cancellation that upon the record of such decision in the local office the land covered by such entry became at once subject to entry; and which further provided, *that where a right of appeal existed in the entryman whose entry had been held for cancellation, that the local office should receive the first application after the notification of the cancellation decision, but should suspend it pending the time allowed to appeal and until a final determination upon appeal, if taken.* We say, further, that this rule was a reasonable and proper rule; that it protected the United States and all persons having interest in the public lands; *that when an application to enter is made in accordance with the rule and when the Secretary of the Interior has held that the rule was abided by, then, we say, property rights vested which ought not to be disturbed.*

In a subsequent case a new rule of course could be promulgated and the decisions out of which the former rule sprung, over-ruled; but that cannot affect vested rights. Sanborn, Judge, in the Germania Iron Company case, says (p. 817):

> "They might undoubtedly have made and promulgated a new rule which would have governed cases arising after a new rule of practice had been made and had become known, but Hartman * * * had the right to the determination of his claims according to the practice as it then existed. Retroactive decisions of judicial tribunals are as vicious and ineffectual as retroactive laws."
>
> And he cites the case of Shreve vs. Cheesman. (69 Fed. 817.)

Sanborn, Judge, says further, on page 817, in speaking of the status and effect of established decisions in the Land Office:

> "The reasonable and established rules and practice of judicial tribunals become as much a part of the law of the land as the statutes under which they act. Witness the innumerable reversals of the trial courts for errors of law in deciding questions of practice which crowd the reports of the appellate courts. Moreover, the rule and practice here under consideration stand upon far higher ground than the ordinary rules for the mere conduct of proceedings in court. They condition the inception, the foundation, the very existence, to all rights and title to this land. Rights initiated in accordance with them became vested rights in property, and attempts to establish rights in violation of them were as though they had not been. They had become an established rule of property, upon which men relied and had the right to rely. The maxim, *"Stare decisis, et non quieta movere,"* applies nowhere more universally, or with more salutary effect, than to those rules and that practice under which property is acquired or secured. It is often far more important that these should be certain and changeless than that they should be right. Men engage in business occupations, buy, sell and contract, in reliance upon them. Lawyers advise their clients and enforce and protect their rights with constant reference to them, and while all interests will readily adjust themselves to, and protect themselves under, erroneous rules, there is neither protection nor safety for any interest under shifting rules."

We believe that the doctrine laid down by Sanborn, J., should govern in the case at bar, and the court should find that the plaintiff did have rights at the time when C. W. Ransom, her attorney, filed in the Department the alleged waiver which the plaintiff charges was a fraud upon her, which a Court of Equity will protect.

But if the decision of the Land Department did not create rights in Mrs. Holt which ought to be protected because the subsequent Cowles vs. Huff case held that application made under the conditions which existed in this case, created no rights, we contend that Mrs. Holt derived rights in spite of the Cowles vs. Huff case in accordance with the rule as laid down in the case of Finkle 33, L. D. 233. In this case one Clark made application to enter a tract of land included in the State of California's Indemnity School Land list. The State's indemnity list was rejected and cancelled subsequently. While Clark's application was pending, Finkle applied to enter. The local officers rejected Finkle's application because of conflict with Clark's pending application. The Secretary of the Interior in his decision admitted that Clark's application was premature and ought not to have been received while the indemnity list remained undetermined, but he holds that such an irregularity is only between the United States and the applicant, and as the Secretary says, "No later intervening party may champion the rights of the Government and make it a weapon of offense in behalf of himself. This is the principle laid down in Whetstone 10 L. D. 263." In other words the Secretary holds that if a premature application is made and received, that as between the Government and the party making such application his rights shall be paramount to one making application later.

Applied to this case, if it is admitted that the receipt and suspension of Holt's application to enter at the time when White's entry had not been determined on an appeal which at that time he had not taken but had a right to take, was premature, it does not lie in Murphy's mouth who applied after such an irregular entry was received to object; it was a matter between the Government and Holt and the Government through the decision of its Secretary of the Interior of June 12, 1895, confirmed to Holt the rights de-

rived from what we have admitted for argument to have been a premature entry.

The distinction between this case and the McMichael vs. Murphy case, and many others in this court, is that in none of them at the time the subsequent entry was made, had there been an adjudication that the prior entry was invalid.

II.

The 4th specification of error objects to the finding of the court below, that it was not necessary to a proper determination of the cause to determine the truth of the charged fraud and conspiracy, because the plaintiff had no rights which could be affected by fraud or conspiracy.

It requires no argument to convince that if the court's conclusion that no rights attached in favor of the plaintiff was wrong, the determination of the fraud and conspiracy charge became the sole issue in the cause. This specification we will dismiss with this comment.

III.

The court below decided that the plaintiff neither alleged nor proved a cause of action. This we allege to be error in our fifth specification, and the errors assigned in specifications 6, 7 and 8 will be argued together with 5.

We will not take the time of the Court to argue that the petition did state a good cause of action, further than to state that it alleged everything that is required by law to constitute the basis of a decree of resulting trust, and that the sole ground upon which the court below held the petition useless was because of the Court's conclusion that the allegations of property rights in the plaintiff did not state property rights, which conclusion we have already seen to be untenable.

We approach the argument that the Court erred in hold-

ing that the plaintiff did not prove a cause of action, confident that this Court will sustain the allegation of fraud and conspiracy if it will give to the evidence contained in this record the careful consideration due from the Chancellor.

We are fully aware of the rules laid down many times by this Court as to its practice on appeals in respect to following the decisions on fact of the Court below. The rule is salutary, but every rule has its exception, and so has this.

The case of Beyer vs. Le Fevre, 186 U. S., 114, is a good example of a case presenting an exception to the rule. In that case the court referred with approval to the general rule laid down in Stuart vs. Hayden, 169 U. S., 114, and then said, p. 119:

> "At the same time there has always been recognized the right and *duty* (italics ours) of this court to examine the record, and if it finds that the conclusions are wholly unwarranted by the testimony, it will set the verdict or report aside and direct a re-examination."

The court did examine the record and although a jury and two courts found the facts, this Court set the finding aside as against the evidence.

There are peculiar reasons why the Court in this case should decide the facts on its own authority.

1. The case differs from any of those in which this Court has laid down the rule stated in Beyer vs. Le Fevre, and similar cases, in that no jury, or no master has ever given to the evidence any consideration whatever, and because no chancellor of the highest court of the Territory has given to the evidence that consideration which is due from the conscience of the Chancellor on a fraud charge. *The Supreme Court of the Territory gave the evidence no consideration whatever, for from its opinion we see that it held it unnecessary to examine the evidence, because it conceived that no property rights existed in the plaintiff which could*

be affected by the fraud charged. It simply followed the decision of the Court below, Record, p. 282, *and assumed the correctness of its conclusion of fact.*

2. Another reason why this Court should decide the question of fact for itself is, that the defendant Classen was, from May 1, 1897, while the contest in which Holt's rights were adjudicated by the Department were before it, until some time in 1901, the Receiver of the local Land Office and some of his actions on this case will be found in the record. The charge is made that Classen was a conspirator with the plaintiff's attorney and the defendant Murphy, whose friend he was, to obtain the title to this land. This he did after the plaintiff's rights had been, as we allege, waived by her attorney without her authority and in furtherance of the conspiracy. Classen derived his title while he was an officer of the United States, and we insist that because the Statutes of the United States are extremely rigorous in denying to its land officers the right to obtain any interest in the public lands while in its employ and because it is charged that the conspiracy in this case had its birth while Classen was such an officer, this Court should carefully examine the testimony.

And again we urge such an examination because the trial court refused to admit competent evidence which is in the record. The plaintiff offered depositions of Classen, and Everest, his attorney, for the purpose of contradicting evidence given by them *viva voce* at the trial, which if admitted might have, and we contend would have, rendered their oral testimony unworthy of belief on the points wherein they testified contrary to the allegations of the plaintiff.

The first point to be made in regard to the fraud charge is, that the waiver of Holt's rights was a fraud on the plaintiff. The waiver itself as it appears in the Record, p. 27, states that the waiver is made in "consideration of the re-

ceipt of $2,000 to them in hand paid, by the said 'Samuel Murphy.' "

> The plaintiff, Record, p. 224, testifies that she never authorized her attorney to make any waiver of her rights, and that she had never been informed by her attorney that she had any rights to be waived. She also testifies that she never received any $2,000, or any other sum from Murphy, or any other consideration.
>
> Ransom, her attorney, testified, p. 176, that he had never been paid $2,000 by Murphy or by any one else, as a consideration for the release of the Holt rights.
>
> Murphy, p. 236, testified that he did not pay Ransom or the Holt heirs $2,000 or any other sum.

We have then the plaintiff, her attorney, and Murphy uniting in testifying to the fact that the waiver as it is spread on the record of the Land Department, speaks a lie. It is upon this waiver and its effect, that Murphy, the defendant in the cause, depends for the situation which allowed him to obtain a patent to the land.

It will be recalled that the decision of the Secretary of the Interior, June 12, 1895, held that Murphy had no rights in the land as a result of his entry upon White's relinquishment, although the decision granted him thirty days within which to file a contest against the Holt interest. Record, p. 136. This Murphy never did. And it is immediately after the filing of the fraudulent waiver that we see the first action of Classen, who was the receiver of the local office, which connects him with the tissue of fraud and conspiracy which followed.

Notwithstanding this decision and Murphy's failure to avail himself of the privilege granted, we find Classen, who became receiver of the local land office about the 1st of May, taking Murphy's final proof on May 20th, just as if his entry had not been finally cancelled by the decision of April 30,

1897. Record, p. 148. The record shows that he then suspended the proof pending Holt's right to perfect his entry. He knew the records of his office showed Murphy's entry cancelled and he knew that Murphy had no right to make final proof or any other proof, under such circumstances. Men do not do such acts without motive and we believe as the progress of events is detailed, the Court will recognize in this act of Classen the first of a series of fraudulent transactions to which he and Murphy were parties.

The law required the entryman to make an affidavit as a part of his final proof, in which he must state that he has not alienated the land except as provided in Section 2288, R. S. Murphy made such an affidavit to Classen as a part of his final proof. Record, p. 150. Murphy swore to this fact May 20, 1897, and so far as the record discloses it was the truth, but it was not the truth when Classen released this proof after the alleged false waiver of Holt's rights by Ransom on June 14, 1897. We say Murphy's proof was taken by Classen and suspended in order that he might in the meantime make certain agreements to convey, which in contemplation of law must be considered as conveyances which the law prohibited prior to certificate of patent rights. If Classen had not taken Murphy's final proof until the alleged waiver was filed, Murphy could not have made his affidavit without perjury, as we shall next show.

Murphy had, when Holt's rights were terminated by the alleged waiver, entered into contracts to convey this land.

Everest, Murphy's attorney in the proceeding in the Land Department, and later Classen's, testified:

> Record, p. 211: That after the decision of the Secretary of the Interior finally confirming the Holt entry rights on April 30, 1897, Ransom, Mrs. Holt's attorney, came to him and suggested that the Holt rights could be bought out and that finally Murphy

agreed that in consideration of Ransom's waiving the Holt rights, he would execute a mortgage and note for $2,000 for the benefit of the Holt heirs, but was to have an option to take up the mortgage and convey by deed in lieu of it 120 acres of the land.

This agreement to convey was of course made before the waiver was filed, hence we say Murphy could not have made such an affidavit as he did on May 20, 1897, if he had been called upon to do so the day the waiver was filed.

The next step in carrying out the scheme was the execution of the mortgage for a stated consideration of $2,000 from Murphy to J. H. Wheeler, under date of June 17, 1897, only three days after the alleged waiver. Record, p. 237.

What truth was there spoken in this mortgage? In the first place examine Wheeler's testimony, the man who was secured for a loan of $2,000 so the instrument set out. And here let us impress upon the court the fact that every witness who testified in this cause, except the plaintiff and her daughter, Julia Dunham, was an adverse witness and interested in defeating the plaintiff from coming at the truth. The court will recognize as it pursues the evidence, constant endeavor to evade straightforward statements of facts clearly within their power to state.

Wheeler testified, Record, p. 190: That he never parted with any $2,000 or any other sum to Murphy or anybody else. He testifies that Everest, then Murphy's attorney, was present when the mortgage was made, engineered the deal and he looked to him for advice. He further testifies that he was merely a custodian or trustee of the mortgage and his understanding with Everest was that he should hold the mortgage until Everest and Ransom directed him to assign it.

What does Murphy say about this mortgage?

> Record, p. 236: He admits that he never received a cent from Wheeler as a consideration for the mortgage. He says he supposed the mortgage was made for the benefit of the Holt heirs and that he told Everest to make the best compromise possible with the Holt heirs, and that he signed anything Everest told him to.

Here we find the maker of the mortgage admitting the statement to be false as to consideration.

What does Ransom, Mrs. Holt's attorney, say about this mortgage?

> He testifies, p. 176: That he does not remember anything about Murphy conveying by mortgage for $2,000 to Wheeler, simply knowing from the record that there was such a deed. Says he had nothing to do with the transaction and was not present with Everest when he went to Wheeler and arranged for him, Wheeler, to accept the mortgage and hold it as trustee, subject to Everest's orders.

This testimony disputes that of Everest and Wheeler as to Ransom's participation, but it is more important in that it substantiates the admittances of Wheeler and Murphy that the consideration stated was not the true one.

What does Everest say?

> Record, p. 102: He says that the consideration of the deed was the release and waiver of the right of the Holt heirs. He says, p. 104, that Wheeler was a go-between and only held the mortgage in escrow. The idea being that if Murphy failed to get his title and patent, then Murphy would have nothing to pay, the note and mortgage would be cancelled and returned. If Murphy got his patent, all rights would be assigned to Ransom, for the Holt heirs.

So we see this testimony all agreeing that the mortgage in no particular spoke the truth. Why did it not? Because if the true consideration of this mortgage, which was, the defendant's witnesses admit, the waiver of the Holt rights, had been stated therein, the world, including White and Classen, would on the record have had notice of the Holt rights in the land in question, and they could not have claimed as they now do, that they never knew that Holt ever had any rights or claimed any in the land.

Ten days later, on the 27th day of June, 1897, we find Murphy conveying by warranty deed the same land to one Batchelder, for a stated consideration of $2,000. Record, p. 28.

> Batchelder testifies, Record, p. 243: That he does not remember very much about the transaction. Says he does not know whether he paid $2,000 or not. Had no records from which he could tell.

What does Murphy, the seller, say?

> Record, p. 237: He says Batchelder did not pay him $2,000 nor a cent. Never saw him. Says as he understood it, "it was to cancel the $2,000 mortgage." Says he made the deed at Everest's request and supposed it was to cancel the Wheeler mortgage and that Batchelder was holding the deed in trust for the Holt heirs instead of the mortgage.

What does Everest say?

> Record, p. 102: He says that the deed was executed and placed in his hand in escrow to be turned over to the party entitled to it, on Murphy's order, when the Wheeler mortgage was released. This deed was never delivered by Everest.

So here we find the Batchelder deed concealing under a

false statement, the real consideration. If that deed had stated its real consideration, which was the waiver, and that Batchelder was a trustee for the Holts (the deed being the exercise of Murphy's option mentioned in Everest's testimony, Record, p. 211), Classen could not be here now claiming to be an innocent purchaser for value.

What was the next step in respect to this land?

On January 24, 1898, Murphy conveyed to White for a stated consideration of $3,500. Record, p. 29.

What does the testimony show in regard to this deed? White did not testify.

> Murphy testifies, Record, p. 239, that the consideration for the deed, which was drawn by Everest, was the relinquishment by White of Murphy's note of $750 given in 1890 in consideration of White's relinquishment.

It should be noted that the consideration for this note was nothing, because at the time it was given White had nothing to relinquish as his entry had been held for cancellation. The note was also outlawed.

> Murphy states that the deed was for the further consideration of White's assuming to pay the $2,000 mortgage to Wheeler if it had to be paid, and some attorney's fees. White never paid the mortgage. Doesn't remember whether he told White of the deed to Batchelder. Murphy did not remember anything definite about the attorney's fees.

Everest was not questioned in regard to this deed.

Regardless of whether there was any legal consideration for the deed from Murphy to White, of January 24, 1898, it stands out clearly that Everest acted as both White's and Murphy's attorney in bringing about the transaction. It had been shown that at the time the Murphy-White deed

was made, Everest knew and so did Murphy, that there was a deed in existence, a warranty deed conveying the same land to Batchelder, and that Batchelder held the legal title under this deed as the naked trustees for the Holt heirs. This being so, White had notice in law of everything which his attorney, Everest, had notice of actually. Therefore, White was not an innocent purchaser for value and he took nothing by the deed, for Murphy had divested himself of all title when he conveyed to Batchelder.

The next step after the execution of the deed to White and its delivery, was its recording, which it was admitted was done a few hours before Everest, who was a custodian of the Batchelder deed, recorded that. It is difficult to conceive of Everest's actions in allowing a conveyance to be made to White by Murphy when he knew that Murphy had disposed of all his title to the land to Batchelder as trustee for the Holts, and it is difficult to conceive any motive which would have induced him, knowing these things and being in fact the custodian of the deed to Batchelder, to allow White to obtain record of his deed, unless it was to leave the record title in White so that the next step could be taken.

It will be recalled that Murphy testified that White assumed the payment of the Wheeler mortgage. It was never intended that he should pay it; for on January 25, 1897, the day after the conveyance from Murphy to White, Wheeler, under Everest's direction, assigned the mortgage to Batchelder, absolutely without consideration, as he admitted. Record, p. 191.

Then by a quit claim deed from Batchelder to White of May 12, 1899, White became the owner of this 120 acres of land by record title clear and free of encumbrance, without the payment of a cent of money and for no actual consideration but the delivery of his note to Murphy, which we have stated to have been without consideration and any

liability on it barred by the five-year statute of limitation of the territory. The note was given in 1890.

And now comes Classen openly into the transaction. He was still Receiver of the Land Office and he had full notice of all he had himself done in respect to the Holt interest as such an official.

Everest, Record, p. 107, says he was employed by Classen in May, 1899, and that he examined the abstract for him. Everest knew when he made the abstract of title for Classen, that the Wheeler mortgage was made for the purpose of settling with the Holt heirs, for he was a party to the transaction; he knew that the Batchelder deed was made to settle with the Holt heirs and he knew that the mortgage referred to in the deed to White from Murphy was the same Wheeler mortgage, and he knew that not one of the deeds spoke the truth. He knew also that a quit claim deed was necessary to clear up White's paper title. He ordered Batchelder to quit claim. It was done and the deed stated a consideration of $1,500. This was false.

There was, in fact, a consideration paid for the quit claim deed from Batchelder to White, but it was not paid by White, nor was it paid to Batchelder.

> Classen says, Record, p. 108, that he paid for the quit claim deed $3,000 through Mr. Stiles. Does not know who the money was for but it was to fix up White's title. Stiles is dead. Says Stiles fixed it up with White and Ransom, or "whoever had the thing in charge."
>
> Ransom, Record, p. 187, admits that checks aggregating $3,000 were handed him by Stiles, but he did not know whether they were Classen's or not.

This $3,000, so far as the Record discloses, stopped in Ransom's hands, for Batchelder testifies that he never got a cent for the quit claim, Record, p. 245; and Mrs. Holt

testifies that she never received anything. Record, p. 224. This $3,000 was the price of Ransom's selling out his client and it connects Classen directly with the waiver.

If this testimony is true the deed does not speak the truth. If it had stated that the quit claim deed was made in consideration of $3,000 paid by Classen to Ransom, Classen's connection with the waiver would have appeared and he could not now claim when he purchased on the 13th day of May, 1899, from White, that he had no notice of the interests of the Holt heirs. By making the record as it is it shows a chain of title from Murphy to Classen through White, with valuable considerations stated in every deed, and it covers up completely the true facts as shown by the testimony, that Classen paid Ransom $3,000 for the Holt waiver instead of Murphy ever having paid Ransom a cent.

White conveyed the land in question to Classen on the 13th day of May, 1899, by warranty deed. The deed purports to have been for the consideration of $2,500. Classen testifies that he did not pay $2,500, but that he gave White a note for that amount. And so at last Classen has the record title to the land.

But it is not necessary to determine whether the consideration stated in the deed from White to Classen is true or not. It is admitted in the evidence, time and time again, that Everest was the attorney of White and Murphy throughout the contest before the Land Department; that he acted as Murphy's attorney in making the transactions involved in the mortgage from Murphy to Wheeler, the deed from Murphy to Batchelder, the deed from Murphy to White; that he acted as Classen's attorney, beginning about the first of May, 1899, when Classen first appears, openly at any rate, in the acquirement of the title to this property.

It requires no citation of authority to sustain the proposition that the knowledge of an attorney is the knowledge

of his client, and that consequently Classen in law knew everything about the Batchelder and Wheeler deeds and the interests which the Holt heirs had through them, as completely as if the knowledge had come to him first hand.

> Classen testifies, Record, p. 205, that he never enquired about any Holt heirs when he purchased of White, he left all that to Everest. He says Everest gave him an abstract of the title which showed that the land had gone to patent and that one deed had gone to White from Murphy, and another to Batchelder. He does not recall, however, that the abstract showed any quit claim deed from Batchelder.

We might cite the case of Smith vs. Ayre (101 U. S., 320), where the courts say, p. 335:

> "There is no doubt that Ayre and Company relied entirely upon the judgment of their attorney as to the power of the executors of the estate of Renick to pledge the note for moneys borrowed to be used in the business of the firm of Renick & Co.; still they must be held to know the law and the limitations which it prescribes to the power of executors in the disposition of property coming into their hands as such onus; and, however free from intentional wrong they must bear all responsibility of a mistaken judgment in respect to those mistakes. The facts brought to the knowledge of their attorney in his inquiries respecting the note and the authority of Renick to pledge it, are in law as brought to their knowledge. Information to him of all essential matters affecting the subject he was investigating was in law, information to them and their actions must be adjudged accordingly. The law in the case goes much further than this; it considers the principal affected with notice of all facts noticed of which can be charged upon the attorney."

The situation in this case is exactly so. Classen employed Everest to give him an abstract of title to the prop-

erty which White claimed to own and which Classen wished to buy. Everest reported the title good in White having a personal knowledge of the defect of that title on account of the interests the Holt heirs as derived through the Batchelder deed. This knowledge was Classen's. It is very plain from the evidence that Classen can not successfully defend against the rights of the plaintiff upon the ground that he was an innocent purchaser of this title. He knew, because his attorney knew, that Ransom's waiver was false in statements; that the Wheeler mortgage was a deceit and that the Holt heirs were the real parties grantee; that the Batchelder deed was a deceit and that it was intended to convey the legal title to Batchelder for the benefit of the Holt heirs; that the Murphy-White deed was a fraudulent deed because Murphy was already divested of his title. He knew from his personal knowledge that the quit claim deed was a deceit, for he himself paid for it; and yet he says he was an innocent purchaser. We contend that the law imputes a knowledge to him, because of the fact that before he took title from White he demanded a conveyance from Batchelder to White by quit claim deed. The law is, that a person taking title by quit claim deed is not a bona fide purchaser without notice. This court in May vs. Le Claire, 11 Wallace, 217-232, laid this down to be the rule and it can make no difference whether the entire title of the claimed bona fide purchaser is dependent upon a quit claim direct to him or whether before he takes title from his grantor he demands a quit claim deed to his grantor. In either event the very existence of the quit claim deed in the record is a notice to him of some imperfection in the title. The case might have been different if White of his own initiative in order to cure an imperfection in his title which had come to his notice had procured a quit claim deed from Batchelder, but it does not apply in such a case as this, where

White, so the testimony shows, did not procure the deed, but Classen did.

For all these reasons, therefore, we submit that Classen was not an innocent purchaser for value, and that he took paper title for this land subject to a trust created in it as a result of the conveyance by Murphy to Batchelder for the benefit of the Holt heirs.

But if the court should find that Ransom, the plaintiff's attorney, did have authority from her to sell out or otherwise compromise her rights to Murphy or anybody else, and if it finds that the waiver actually executed and filed was in furtherance of that authority, in that event we say that the plaintiff is entitled to a decree. In other words, in the event that the record shows that there was no fraud and conspiracy between Classen and Murphy and Ransom in the procurement of the waiver, or admitting for argument that the waiver itself was not attended by fraud to which Classen was a party, still Classen does not hold his present paper title as an innocent purchaser for value, because he had notice, as we have shown in the previous argument, of Murphy's conveyances to Batchelder and the fact that this conveyance was made for the benefit of the Holt heirs. We will not cite the court to authorities for the proposition that where one person pays a purchase price for property and the title is placed in the name of another, that the naked legal title to the property vests in the grantee subject to a resulting trust for the benefit of the person who paid the purchase price. This is exactly what occurred in this case. Mrs. Holt, through her attorney, if we admit, for the sake of argument, that she so authorized her attorney, made waiver of her entry rights as a valid and legal consideration for the conveyance from Murphy to Batchelder, who was to hold the naked legal title thus conveyed until such time as Murphy perfected his patent, when Everest, Murphy's attorney, would

instruct the holder of the naked legal title to convey to Mrs. Holt. The evidence unequivocally shows this to have been the trade. The argument set forth in the prior part of this brief in respect to the title derived by White and Classen applies to the argument we are now making and we will not repeat it except to conclude that Classen now holds the naked legal title to this land, subject to the equitable title of Mrs. Holt.

It may be contended that Ransom and through him Mrs. Holt, had notice of the right of the Holt heirs fixed by the decision of April 30, 1897, to perfect entry on this land within thirty days, on the 12th day of May, 1897; that the thirty days period would have elapsed on the 12th day of June, 1897, and that consequently the Holt heirs' rights in the land were completely divested by the limitation of this thirty days and that there was no necessity for the filing of the waiver on June 14, 1897.

When Ransom, and through him the plaintiff, had notice of the beginning of the thirty days, is a matter for the defendant in this case to prove, if they propose to rely upon that date to support their case. There is no evidence in the records as to when Ransom actually received notice of the decision of April 30th. The letter from Dilley, Register, to Ransom and Bailey, attorneys, at Perry, Oklahoma Territory, under date of May 12, 1897, is not evidence of anything, except perhaps that such a letter was written. It certainly is not evidence of its receipt. Perry is at least sixty miles from Oklahoma City where the Land Office was, and that letter must have gone in the due course of the mails. There is absolutely no evidence in the record as to the time when the notice was mailed or as to the time which the ordinary course of mails would have required to have brought the letter to Perry; neither is there a word of evidence in the record to show that the letter was, in fact, mailed. There is absolutely nothing in the record to show

that Ransom ever received this letter, neither is there any evidence in the record to show *when* he *in fact* received notice of the rights of the Holt heirs to perfect within thirty days.

That he received notice at some time after the 8th of May is unquestioned, but that he received it on the 12th is another matter. It seems to us, however, that the complete answer to this proposition is the apparent absurdity of Murphy and Everest and Ransom getting together and making an agreement to waive the rights of the Holts at a time when, as they now say, Holt's rights had already been limited by the expiration of the thirty days; equally absurd for the Receiver and the Register of the local Land Office to have received and placed of record such a waiver, when in order to perfect Murphy's rights, if there were any, no waiver was necessary. It is difficult to conceive of Everest, Murphy's attorney, trading off land which Murphy expected to get when the Holt interests were out of the way, if as a matter of fact the Holt interests were already out of the way.

With reference to laches as charged in the answer of the defendants herein, the evidence and the law will not sustain that allegation. There is no evidence in the record that the plaintiff, or her attorney of record, were notified of the decision of May 8, 1897. The notice in the record was copied from the records of the local Land Office and was certified by Seymour S. Price, Register of the local Land Office of Oklahoma. See Record, p. 163. There is no evidence that said notice was ever mailed; the letter was simply written by Dilley and never passed out of the local Land Office so far as the records in this case show. Service of notice of the local Land Office of decisions and matters involving the rights of parties, is made either by registered letter with the receipt from the post office at-

tached, or notice made by personal service by Register or Receiver and signed and accepted by the party which must accompany the report. See 3 L. D., p. 140; 5 L. D., p. 204, for rule laid down by the Department governing the service of notice in cases like the one at bar. Therefore there was no notice served on the plaintiff or her attorney, as required by law or otherwise, of the decision of May 8, 1897. We think that the evidence taken together would justify the inference that Murphy, with Classen's assistance, concealed the decision of May 8, 1897, from the plaintiff and her attorney until they could procure from Ransom an advantageous settlement of this case, as is set out in Everest's testimony, pp. 103 and 104 of this record.

~~The pretended settlement with Ransom was evidently made previous to May 8, 1897, because on May 20, 1897, we find Classen taking the final proof of Murphy to the land in controversy, at a time when Murphy's entry had been cancelled by the decision of November 1, 1895, and so at the time Classen took said final proof, pending on a motion to reinstate Murphy's entry which had been cancelled by the decision of the Commissioner of the General Land Office. See Record, p. 147 and 150.~~

The record further shows that the plaintiff, Amelia M. Holt, at the time of the death of her husband and long afterward, was a resident of Ellenborough, Clinton County, N. Y., and that after the death of her husband she employed Ransom to represent her in the Land Office and in the courts with reference to the land in controversy. At page 262 of the Record is a letter from Ransom written to the plaintiff, dated Oklahoma City, February 26, 1904, and also a letter at page 261, dated from Perry, Oklahoma, November 22, 1894, in which Ransom advised the plaintiff not to write to any one or communicate with any of her neighbors

or any of the other children of Levy Holt with reference to her claim for land in Oklahoma and not to let the children know that such claim was in existence; and advised her that in her case, silence was golden; that he did not wish to pull a huge chestnut out of the fire for the benefit of his brothers-in-law, *and advised her not to write or talk to anybody about this land,* and that HE would notify her when she must act.

The record evidence of Amelia M. Holt shows that she depended entirely on her son-in-law, Ransom, and obeyed his orders in every particular.

> Ransom testifies, Rec., p. 186, that he wrote to the plaintiff advising her of the decision and that he received a reply from her stating that she could not come West and to go ahead and settle up her rights to suit himself.

> The plaintiff in her testimony, Rec., p. 257, says she never wrote any such letter nor did anybody for her do so. She also denies that she ever received any letter from Ransom in 1897.

To substantiate Ransom's testimony, his wife testifies, Rec., pp. 98, 100, that she saw a letter on his desk from the plaintiff which said she would not come to Oklahoma and authorized her husband to do as he pleased with the entry. When pressed as to the circumstances and time when she saw this letter her testimony is far from definite. She says it was since her marriage. She had been married ten years. She thought it was in the spring of 1896 or 1897, during cold weather and before May, 1897. If this is true she did not see any letter from Mrs. Holt in regard to the matter, because Ransom does not pretend to say that his letter to Mrs. Holt to which hers was a reply was written until after May 8, 1897.

More than this it is significant that neither the original of Mrs. Holt's alleged letter can be produced, nor a copy of Ransom's to Mrs. Holt.

Mrs. Holt further testifies in substantiation of her testimony that she never wrote to Ransom as he says, that she was physically incapacitated from writing and the testimony of her daughter, Julia Dunham, corroborates her on this point.

But with this conflict will the court believe a man smirched as Ransom is by the silent testimony of the facts in relation to his participation in Murphy and Classen's deals as against this woman?

The record further shows that this land when the paper title was finally procured for Classen, was open and unimproved land; that said land is still unimproved; that the plaintiff has not sat by and seen valuable improvements placed upon said land, or done any other act by which she could be charged with leading other people to believe that she was not setting up any claim to said land; but on the contrary, at the earliest moment that she could after learning that she had been defrauded and that Ransom, instead of representing her interest in said land, had fraudulently sold her land and assisted others in procuring patents and deeds to the same, and defrauding her out of her rights to said land. The record shows that the plaintiff has used every means in her power to assert her rights and procure testimony of all the facts connected with the case, and present her claims in court, that the public might know that she was asserting her rights to said land.

She relied on her attorney to notify her of her rights and if by fraud or concealment on his part she was prevented or induced to lie quiet and not inquire as to her rights, laches can not be attributed to her.

We do not deem it necessary to cite any authorities on the subject of laches, other than those cited by the defendants.

We respectfully insist that this court should sustain the contentions of the plaintiff in this case.

Respectfully submitted,

JOHN S. JENKINS,
JOHN B. COTTON,
WM. FRYE WHITE.

Supreme Co

OF THE

UNITED STATE

[redacted]

AMELIA M. HOLT,
Appellant.

vs.

SAMUEL MURPHY,
ANTON H. CLASSEN,
FRANK M. RILEY, et al,
Appellees.

No. 61

BRIEF FOR APPELLEES

J. H. EVEREST,
Attorney for Appe

IN THE

Supreme Court

OF THE

UNITED STATES

NO. 335.

AMELIA M. HOLT,
Appellant.

vs.

SAMUEL MURPHY,
ANTON H. CLASSEN,
FRANK M. RILEY, et al,
Appellees.

BRIEF FOR APPELLEES

This is an action brought by the appellant, Amelia M. Holt, against Samuel Murphy and his grantees to declare a resulting trust in favor of the appellant and

against the appellees upon the allegation in substance that under the public land laws of the United States properly administered, the legal title to said real estate involved should be vested in the appellant.

The petition in the trial court alleged in substance as follows, to wit: that the Southwest Quarter of Section Twenty-Seven (27), Township Twelve (12) North, Range Three (3) West I. M. Territory of Oklahoma was entered as a homestead under Section 2289 of the Revised Statutes of the United States at the United States Land Office at Guthrie, Oklahoma, on April 23rd, 1889, by Ewers White. That said entry was contested by various contestants among them being Vestal Cook and Charley J. Blanchard. A judgment was rendered in said action by the Register and Receiver of the Land Office at Guthrie, Oklahoma, holding that all the claimants for said tract were disqualified and on appeal the Commissioner of the General Land Office, Washington, D. C., affirmed the action of the Register and Receiver, and held the homestead entry of Ewers White for cancellation and recommended the dismissal of all contests, said decision being dated March 7th, 1890. From this

decision the entryman, Ewers White, duly perfected an appeal to the Secretary of the Interior, which appeal was decided by the Secretary of the Interior July 21st, 1891 (Blanchard vs. White et al, 13 L. D. 66). Meanwhile and during the time allowed for appeal to the Secretary of the Interior from the decision of the Commissioner of March 7th, 1890, one Levi Holt, on March 11th, 1890, attempted to file a soldier's declaratory statement for said tract of land which said soldier's declaratory statement was suspended by the Register and Receiver. After the attempt to file said Declaratory statemeat by Levi Holt, to wit: on the 29th day of November, 1890, the entryman, Ewers White, relinquished said homestead entry and defendant, Samuel Murphy, was allowed to make homestead entry thereof. That prior to the date of relinquishment by White and the entry of Murphy, one William T. McMichael had settled upon said land and had been ejected by the military arm of the Government. That upon appeal of McMichael, the rights of the various parties then remaining unadjudicated, to wit: the right of Murphy, the right of McMichael and the right of Holt were considered by the Hon. Secretary of the In-

terior and the said application of Holt to file declaratory statement was revived in the name of his heirs and such application was held superior to the right of Murphy under his entry, and the claim of McMichael to a prior settlement right was denied The petition sets out in full the decision of the Hon. Secretary of the Interior awarding the heirs of Levi Holt a right to perfect said soldier's declaratory statement. The petition then alleges a conspiracy between C. W. Ransom, Samuel Murphy, Anton H. Classen and others, in pursuance of which it is alleged that Ransom, the attorney for the heirs of Levi Holt, waived the right of the said heirs to perfect said soldier's declaratory statement. Thereupon the entry of Murphy was allowed to remain intact and in due time passed to patent.

The testimony introduced at the hearing by the plaintiff and defendant showed, as found by the trial Court, that the record facts as alleged in said petition were correct, but said evidence showed that the allegations of fraud and conspiracy made by the plaintiff against the defendants, were untrue. It further developed that C. W. Ransom, the attorney for

the heirs of Levi Holt in the litigation before the Interior Department, was served with notice of the right of the said heirs to perfect homestead entry, on May 12th, 1897, as shown by the report of the Hon. B. M. Dilley, Register of the United States Land Office, to the Hon. Commissioner of the General Land Office, found on page 157 of the printed record and copy of said notice found on page 158 of the printed record. That in response to this notice, he filed a waiver of the right of said heirs to perfect said entry. Even if this waiver had not been filed, said heirs only had thirty days from May 12th, 1897, to perfect said declaratory statement, and having failed to exercise said right, said heirs would be barred and precluded from thereafter asserting any right to the land. Whether this was the laches of the attorneys in notifying their client, or as Ranson testified at the hearing, and plaintiff failed to make the entry, is immaterial, as the findings of the trial Court are against the plaintiff on the allegations of fraud and conspiracy.

Plaintiff, having failed, as before stated, to make entry within the time allowed, upon due report to the Commissioner of the General Land Office, the case was

closed, leaving Murphy's entry entact. (See copy of decision of Hon. Binger Hermann, Commissioner, on page 161 of the printed record.)

The trial Court found all of the issues in favor of the defendants, and againat the plaintiff, and rendered judgment dismissing the action of the plaintiff with prejudice and quieting the title of the defendants as against the plaintiff and the co-defendants, the other heirs of Levi Holt. (See pages 268, 269 and 270 for Journal Entry of Judgment in the trial Court.)

Upon motion for new trial being overuled, case was appealed to the Supreme Court of the Territory of Oklahoma, and the opinion of said Supreme Court is found on pages 278 to 283 of the record. On the 9th day of January, 1905, petition for rehearing was denied by said Supreme Court, judgment denying said petition for rehearing being found on page 287 of the record.

BRIEF AND ARGUMENT.

The legal propositions involved in this appeal can be grouped under four heads. It is asserted by the appellees that the plaintiff cannot recover for four reasons:

First. Because the plaintiff has not shown her

self entitled to a patent to the land and her bill therefor lacks equity.

Second. Because the plaintiff never in fact acquired any right or equity in the land involved because the decision of the Secretary of the Interior awarding the heirs of Levi Holt the right to enter said land was erroneous and contrary to law.

Third. Because as to the defendant, Anton H. Classen, and the 120 acres of land claimed by him, the record shows that he was an innocent purchaser after patent without notice of any of the pretended equities of the plaintiff.

Fourth. That the plaintiff was guilty of laches in the prosecution of her suit and should, therefore, be barred of relief in a Court of equity.

First. The plaintiff's bill lacks equity. She nowhere alleges that she has earned patent to the tract in controversy by either making entry of the land, establishing residence on the land, paying the Land Office fees

or cultivating any portion of the tract in controversy. She alleges that if she had not been deceived by her attorney, she would have done these acts, but the Court found against her on these allegations of fraud and conspiracy on the part of the attorneys, but even if the allegations in her bill were true, they were not sufficient to give her any standing in a Court of equity so as to enable her to maintain suit for a resulting trust.

Baldwin vs. Keith, 75 Pac., Page 1124.

Bohall vs. Dilla, 114 U. S., 51.

Sparks vs. Pierce, 115 U. S., 408.

Lee vs. Johnson, 115 U. S., 48.

Emblen vs. Lincoln Land Co., 184 U. S., 661-663.

The testimony of the plaintiff, herself, found on pages 226 to 227 of the printed record shows that she was never in Oklahoma Territory in her life, that neither she nor her husband ever resided upon, cultivated or improved the tract in controversy in any way and that they have never spent a cent of money in the litigation over this land.

Second. The decision of the Secretary of the Interior awarding the right of entry to the heirs of Levi

Holt was erroneous as is evident from a consideration of the decision. The right of the Holt heirs is founded upon the application of Levi Holt, made March 11th, 1890, at a time when the entry of Ewers White was intact upon the records of the Land Department. A judgment of cancallation had been rendered by the Commissioner at this time, but an appeal had been taken by White and the entry was not cancelled until White filed his relinquishment on November 29th, 1890, more than six months after Holt had applied to file a declaratory statement. That no rights are gained by an application to enter land segregated from the public domain by an entry of record or by settlement thereon is too well settled to require extensive citation. It is sufficient to say, that the department, itself, recognized that its ruling was erroneous in the McMichael-Murphy-Holt case, and held in the case of Cowles vs. Huff, 24 L. D., page 81, that no rights could attach by application for land covered by an entry until final judgment and the closing of the case. In the body of said case on page 86, Secretary Francis says:

"The Department has repeatedly held that an en-

try segregates the land covered thereby, and so long as such entry exists, it precludes any other disposition of the land. Whitney vs. Maxwell, 2 L. D., 98; Schrotber, ger vs. Arnold, 6 L. D., 435; Allen vs. Curtius, 7 L. D. 444; James A. Forward. 8 L. D., 528; Russel vs. Gerold 10 L. D., 18. Swins vs. Ward, 13 L. D., 686; Hanscom vs. Stines. et al, 15 L. D., 27; Faulkner vs. Miller, 16 L. D., 130.

"The courts have held the same view. Witherspoon vs. Duncan, 4 Wall., 210; Starr vs. Burk, 133, U. S., 541., 548.

If the land covered by a subsisting entry is not subject to disposition, it follows that an application to enter such land confers no rights whatever upon the applicant. If such application shall be rejected, and an appeal be taken from such action, it is not a pending application that will attach on the cancellation of the previous entry, for the appeal cannot operate to create any right not secured by the application itself. See Patrick Kelley, 11 L. D., 326; Goodale vs. Olney (on review), 13 L. D., 498; Maggie Laird, Id., 502; Holmes vs. Hockett, 14 L. D., 127; Swanson vs. Simmons, 16 L. D., 44;

Mills vs. Daly, 17 L. D., 395; Cook vs. Villa (on review), 19 L. D.. 442; Walker vs. Snider (on review), Id., 467; Gallagher vs. Jackson, 20 L. D., 389; McMichael vs. Murphy et al (on review), Id., 535; McCreary vs. Wert et al, 21 L. D., 145.

In view of these authorities, it is held that Huff did not acquire any rights, either by his application to enter, or by his appeal."

The decision of the Secretary under consideration, has been before this Court in the case of McMichael vs. Murphy, reported in 197 U. S. 304 and in that case, this Court held that:

"A homestead entry on land in Oklahoma Territory which is valid upon its face, although made by one in fact personally disqualified to make a valid entry, prevented the initiation of homestead rights by another, while it remains uncancelled of record by some direct action of the Land Office, or by relinquishment."

It follows that if McMichael could obtain no right by settlement upon segregated land that Holt could obtain no right by an application to enter land while said entry remained uncancelled of record. The manifest

absurdity of the decision of the Secretary in holding that the tract in dispute was not subject to McMichael's settlement because of the uncancelled entry of White, and at the same time holding that this uncancelled entry did not segregate the tract so as to preclude the attachment of Holt's right by the mere application to file a soldier's declaratory statement, is too apparent to need comment.

If the entry of White segregated the land until it was cancelled, and cut off McMichael's settlement, it also segregated the land so as to prevent the acquisition of any right by Holt, or by any one else, by mere application to file declaratory statement or to make any other form of entry. It is immaterial whether such application was suspended or rejected.

It is needless to say that if the decision of the Secretary was erroneous in awarding the Holt heirs any right to enter the tract in controversy, that equity would not declare a resulting trust in favor of the plaintiff based on such misconstruction of the law.

Third. The case at bar, however, went to trial and evidence was introduced by both plaintiff and defendants. The trial court found that the plaintiff had

failed to sustain the material allegations of her petition as against the defendants. The Supreme Court of the Territory of Oklahoma affirmed such findings. The charge, therefore, in the petition that the defendants conspired with the defendant, Ranson, to deceive the plaintiff, failed for want of proof, there being no evidence in the record to justify the conclusion, either that there was any conspiracy to defraud between Murphy and Ransom, or that the defendant, Classen, was a party to, or had any knowledge of such alleged conspiracy. This leaves the defendant, Classen, an innocent purchaser, for value, after patent, with nothing to impeach his good faith, or to bring home to him any knowledge of the transaction between the plaintiff and her attorney, Ransom, and the defendants urge that the defense that said Classen was an innocent purchaser, for value, after patent, is an absolute bar to the bringing of this suit by the plaintiff or even to an action by the United States to cancel the patent on the ground of fraud.

Colorado Coal & Iron Co. vs. United States, 123, U. S. 307.

United States vs. Marshall Silver Mining Company, 129 U. S. 579.

Fourth. It is, I think, evident that the plaintiff was guilty of laches in the prosecution of this suit. It appears from an examination of the record that on May 8th, 1897, the heirs of Levi Holt were awarded the right to perfect this declaratory statement and the plaintiff could at any time after said date, have asserted her right to this tract of land. She asserted no right whatever to the tract until the 16th day of September, 1901, nearly four and one-half years after the final decision by the Interior Department, when she filed the petition in this suit in the District Court of Oklahoma County, Territory of Oklahoma. An examination of her testimony found on pages 222 to 229 of the printed record shows that the plaintiff made no effort whatever during this period of time to ascertain the status of this case from the Interior Department or to assert any right to the tract of land, although she was notified by her attorney that the time had about come for her to file upon this land. This testimony showed that on November 3rd, 1894, she was notified that the contest case was nearing its close, and that she must be prepared to enter the land and she testifies on the bottom of page 226 that she never paid

any further attention to this contest after she answered this letter of November 3rd, 1894, until the fall of 1901, a period of nearly seven years, when she received a letter from J. S. Jenkins, an attorney, soliciting her to begin suit for said land. It is evident that the plaintiff could have obtained the exact status of this tract at any time by either writing to her attorney, C. W. Ransom, the register and Receiver of the Land Office at Oklahoma City, Oklahoma, or the Commissioner of the General Land Office at Washington, D. C. and her failure to pay any attention to said case for almost seven years, and to assert any claim she may have had to the land for over four and one-half years after the time when she could have first asserted it, ought to bar her of any relief in a Court of equity in the presence of a valid intervening, adverse right by purchase, after patent. Meanwhile the land had increased in value from $2,000.00 to $100,000.00 as is shown by the affidavit of value on page 5 of the printed record.

Wagner vs. Baird, 48 U. S., 234.

Galliher vs. Cadwell, 145 U. S., 368.

Johnson vs. Standard Mining Co., 148 U. S. 360.

For the reasons above given, the appellees respectfully urge that the decision appealed from be affirmed.

J. H. EVEREST,

Attorney for Appellees.

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JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States

AMELIA M. HOLT,
Appellant.
vs.
SAMUEL MURPHY,
ANTON H. CLASSEN,
FRANK M. RILEY, *et al.*,
Appellees.

No. 61.

SUPPLEMENTAL BRIEF FOR APPELLEES.

J. H. EVEREST,
Attorney for Appellees.

IN THE

Supreme Court of the United States

No. 335.

AMELIA M. HOLT,
Appellant.
vs.
SAMUEL MURPHY,
ANTON H. CLASSEN,
FRANK M. RILEY, *et al.*,
Appellees.

SUPPLEMENTAL BRIEF FOR APPELLEES.

The appellant having filed a brief in said case after the original brief was prepared and filed by the appellees the appellees respectfully call the attention of the Court to the following supplemental brief in answer to some of the specific propositions advanced by the appellant.

Counsel for appellant set out in their brief an entirely different specification of error than that filed in the Court below with the petition in error. This practice I understand is sanctioned by the Court, although the specification filed in the Court below be practically abandoned in the brief and a new specification adopted.

I.

In answer to the argument advanced in support of this specification in error it will be noted that counsel predicate their entire argument on the supposition that the decision in the McMichael-Holt-Murphy case was in pursuance of an established rule of the Department in force at that time and for a long time thereafter. This assumption is not borne out by the decisions of the Department. It is contended that the rule enunciated in the original McMichael-Holt-Murphy case in the Land Department involved in this action followed decisions made by the Department and that as the appellant acquired a right under this rule, and notwithstanding that the rule was finally abrogated and a new rule put in force, that the decision should stand. While there had been some decisions of the Department supporting the view that an application, filed after judgment by the Commissioner of the General Land Office, and pending the time allowed for appeal and final adjudication by the Secretary, should be filed and suspended to await the final determination of the case, yet the weight of the authority was prior to the McMichael-Holt-Murphy decision against such practice. See Cowles vs. Huff, 24 Land Decision, page 81, in which the authorities for and against this rule are collated and discussed, and in which the Secretary says, after reviewing the conflicting decisions, that "this summary shows beyond any question that there is, in some particulars at least, an irreconcilable conflict between these cases."

On the 11th day of March, 1890, when Holt filed declaratory statement there had never been but two decisions made by the Department in support of this practice, namely: the case of Reed, 6 L. D., page 563, and Henry Gauger, 10 L. D., 221, both of them *ex parte,* where the issue was solely between the applicant and the Government.

In Cowles vs. Huff, *supra,* the Secretary declares that Reed case, *supra,* is not in point.

On the other hand, the Department had squarely held prior to that date that an entry so long as it remained of record segregated the land covered thereby and precluded any other disposition of said land until finally cancelled.

Whitney vs. Maxwell, 2d L. D., 98.
Schotberger vs. Arnold, 6 L. D., 425.
Allen vs. Curtis, 7 L. D., 444.
James vs. Forward, 8 L. D., 528.
Russell vs. Gerold, 10 L. D., 18.

After the date of the application of Holt and prior to the Secretary's decision in the McMichael-Holt-Murphy case the weight of the authority was against the recognition of any right by an application for segregated land.

Hanscom vs. Sines, *et al.*, 15 L. D., 27.
Swims vs. Ward, 13 L. D., 686.
Faulkner vs. Miller, 16 L. D., 130.
Patrick Kelley, 11 L. D., 326.
Goodale vs. Olney (on review), 13 L. D., 498.
Maggie Laird, 13 L. D., 502.
Holmes vs. Hockett, 14 L. D., 127.
Swanson vs. Simmons, 16 L. D., 44.
Mills vs. Dally, 17 L. D., 345.
Cook vs. Villa (on review), 19 L. D., 442.
Walker vs. Snider (on review), 19 L. D., 467.
Gallagher vs. Jackson, 20 L. D., 389.
Patton vs. Kelley, 11 L. D., 469.
Saben vs. Amundsen, 9 L. D., 578.

It appears that until the decision in the case of Cowles vs. Huff, *supra,* there was no established rule or practice. The decisions of the Department prior to that date were hopelessly at variance.

The Courts had, however, uniformly held whenever the question was presented that a homestead entry segregated the tract covered thereby until finally cancelled by judgment or relinquishment.

Witherspoon & Dakota R. R. Co. vs. Whitney, 132 U. S., 357.
Star vs. Beck, 133 U. S., 541-548.

Recently the cases of Hodges vs. Colcord, 193 U. S., page 192, and McMichael vs. Murphy, 197 U. S., page 304, hold to the same doctrine.

The case chiefly relied upon by the appellant, Germania Iron Co. vs. James (C. C. A.), 89 Fed., 811, is not in point. The case denied the right of a premature application to enter public land, the proposition contended for by appellees. The reasoning of that case on the doctrine of *stare decisis* is predicated on what is found by that Court to be an established rule. As appears from the above citations, there was no established rule applicable to the Holt application. Moreover, while the Secretary of the Interior could undoubtedly prescribe a rule providing for the time when a cancellation might take effect after final judgment, he could not by rule make land subject to appropriation which was covered by homestead entry, the validity of which was still a matter for decision by the Department. The one rule would be in furtherance of law and to carry the law into effect, but the other would be in contravention of the law.

II.

As appellant has not argued the fourth specification of error I will not do so.

III.

As counsel has seen fit to argue the remaining specifications of error together, I will take them up in that order.

As I have already presented the authorities in my original brief establishing that the original and amended petitions in the Court below and the evidence offered thereunder neither constituted or provide any cause of action, I will not re-argue that question here except to state that the petition is fatally defective because it nowhere shows that the plaintiff had ever done a single thing to earn the patent to the land in controversy. No rights were gained by either settlement or entry improvement or cultivation, or by the expenditure of a single dollar.

It is urged quite strenuously by the appellant that the Court should examine all the evidence in the case at bar and decide the case from the evidence. Counsel admit *in limine* that the rule that the Court will not re-examine questions of pure fact, decided by the Court below, is well established but claim that this case is an exception to the rule and allege as the main reason for such claim and demand for an examination of the evidence *de novo* by this Court that the Supreme Court of the Territory of Oklahoma gave the evidence no consideration whatever. This is an assertion and an assumption on the part of counsel contradicted by the record. The record shows that the Court below expressly considered this matter. See pages 282 and 283 of the printed record. The Court says in its opinion, after discussing the general findings by the Court below: "In our opinion the District Court was warranted in finding that the allegations of fraud in the petition were not sustained by the evidence." It thus appears that the decision of the District and Supreme Courts concur on all questions of fact. Under such circumstances the rule is clear that this Court will not re-examine such issues of fact on proceedings in error.

Appellant insists that the record shows that Classen was not an innocent purchaser for value, and then cites portions of certain depositions and testimony which were expressly excluded from the record by the District Court, which decision so excluding these depositions, was not disturbed by the Supreme Court of Oklahoma. This appears to counsel for appellees as unfair both to this Court and to the appellees. Counsel did not attempt to show wherein the trial court erred in rejecting the depositions of defendants A. H. Classen and J. H. Everest. It is, however, clear that the trial court did not err in excluding these depositions. Section 358, of Chapter 66, Code of Procedure Civil, 1893, Statutes of Oklahoma, in force in Oklahoma at the time of this trial, provided that,

> "358. The deposition of any witness may be used only in the following cases: First, when the witness does not reside in the county where the action or proceeding is pending or is sent for trial by change of venue, or is absent therefrom. Second, when from age, infirmity, or imprisonment, the witness is unable to attend court, or is dead. Third, when the testimony is required upon motion or in any other case where the oral testimony of the witness is not required."

The record shows that these two witnesses whose depositions were sought to be introduced were present in Court. This rendered the introduction of their depositions illegal in the face of objection and the trial court so held. See page 94 of the printed record, at the bottom of the page. The plaintiff called both of these witnesses and examined them but afterwards moved the Court for permission to withdraw their testimony, which permission was granted. The defendant called both of said witnesses in chief and the appellant attempted to use said depositions to prove facts not brought out in the examination of said witnesses in chief

and the Court excluded the impeaching questions as not proper cross-examination.

Counsel seek to prejudice the case by asserting on page 17 of their brief that Classen was from May 1, 1897, while the contest in which Holt's rights were adjudicated by the Department was before it, until some time in 1901, the receiver of the Local Land Office. This is true, but inasmuch as Classen has not been shown by any evidence whatever to have acquired any right or claim, or made any contract relating to this land, until after the patent had issued, and the land had been sold to a third party, I can not see wherein this fact is material to the case at bar. Let us briefly summarize the different steps by which Classen acquired title to the 120 acres.

While the contest was pending between McMichael, Holt, and Murphy, Murphy submitted his final proof, which was suspended to await the result of the contest, by Classen as receiver. On page 19 of their brief counsel make a bugaboo of the fact that Classen received and suspended this proof. This procedure of accepting and suspending final proof was in pursuance of the specific ruling of the Department, and the receiver had no option in the matter; his action and duty in accepting and suspending were purely ministerial. See rule 53 of the Rules of Practice, 23 L. D., page 600. After the notice to Ransom & Bailey, attorneys for the Holt heirs, found on page 158 of the printed record and after Ransom had filed a waiver of the Holt heirs, the whole matter was reported to the General Land Office as shown on page 157 of the record, the case was closed by the Honorable Commissioner on May 8, 1897, and the entry of Murphy was only to be cancelled in the event that the heirs of Holt applied to enter the land within 30 days from the date of notice. See page 158 of the record. On December 18, 1897, the Honorable Commissioner of the General Land Office closed said case by letter of that date, which is found

on page 161 of the printed record. Thereafter final receipt was issued in due course of business, and on the 19th day of January, 1898, patent was issued to Samuel Murphy. On the 24th day of January, 1898, after the patent had been issued to Samuel Murphy as aforesaid, one Ewers White obtained and recorded a warranty deed from Samuel Murphy and wife to the 120 acres in controversy. This deed with the endorsement thereon is found on pages 29, 30 and 31 of the printed record. It will be noted that this was filed for record at 7.30 o'clock a. m., January 25, 1898. In the meantime and on the 27th day of July, 1897, Murphy and wife had made a deed to Ferdinand Batchelder to the same land. While this deed was never delivered by Samuel Murphy and wife it was wrongly recorded against said land, on the 25th day of January, 1898, at 9.25 o'clock a. m. See pages 28 and 29 for copy of this deed with endorsement. It was not until more than one year after patent had issued and the land had been conveyed to White that Classen purchased the land from White and wife. See pages 32 and 33 of the record. At the same time Classen required White to procure and file a quit claim deed from Batchelder to the tract in controversy, thus uniting all sources of title in Classen. There is absolutely nothing in the record to connect Classen prior to this time with the land in controversy or with any of the parties to said contest, and he stands before the court under all the evidence as an innocent purchaser, for value, after patent with no fact, which rightly considered, even tends to impeach his integrity in the transaction. Counsel for appellant attempted to show to the court that no notice of the right of the Holt heirs to perfect entry to said land was ever given by the Land Office to Ransom and Bailey. The record shows, however, this notice on page 158 above referred to, and the proof of this notice was offered by appellant at the

trial. See stipulation on top of page 93 of the record and exhibit "A," so admitted, found on pages 156 to 163 of printed record. Counsel for appellant are not in a position to challenge the effect of evidence offered by the appellant.

Counsel contend that at the time the waiver of the Holt heirs was filed by Ransom that the time for entry to this land by said heirs had expired. This is an error. The notice is dated (see page 158 of record) May 12, 1897, and allows the Holt heirs 30 days to enter this land. This notice was in accordance with Rule 106 of Rules of Practice, 23d L. D., 606. Being a notice to a non-resident attorney by mail, 10 days were allowed for transmittal in addition to the 30 days given by the notice. See rule 87 of Rules of Practice, 23d L. D., page 609. It will thus appear that the time within which the Holt heirs might perfect said entry would not expire until June 21, 1897, and the waiver of the Holt heirs was filed on the 14th day of June, 1897.

When the evidence is carefully examined and rightly considered and the Rules of Practice and all of the circumstances and conditions surrounding the transaction are made plain, it is evident that these appellees acted in entire good faith in the transaction and that the finding of the trial and Supreme Court that there was no fraud or conspiracy on the part of the defendants is supported by the overwhelming weight of the evidence of the case.

It is immaterial to a correct termination of this case whether the attorney for the Holt heirs, C. W. Ransom, acted in good faith with their client or otherwise, as the defendants had no notice or knowledge of such bad faith, if any existed.

Counsel for the appellee, however, urge that the record shows by a fair preponderance of the evidence that Amelia Holt had abandoned the prosecution of the contest case, as testified to by Ransom and his wife, and as corroborated by the testimony of Amelia Holt herself, and that Ransom's

action in waiving the right of the Holt heirs to enter said land was not in fraud of the appellant's rights. Whether or not Ransom has paid his client, the appellant, the proceeds of such transaction, is immaterial to this controversy.

Much stress is laid in the brief of appellant upon the proposition advanced on pages 29 and 30 of the brief filed that a resulting trust would inure to the appellant by virtue of the conveyance of Murphy and wife to Batchelder, reference to which has been made above. It is sufficient to say that the evidence of J. H. Everest in the record, which is uncontradicted, shows that this deed was never delivered. See pages 102 to 103 of the record. This deed is shown to have been placed in escrow to be turned over to one Ferdinand Batchelder when Mr. Murphy authorized that this be done, and upon the release of a mortgage of $2,000 then on the land. The mortgage was never released and the deed was never delivered. Besides it clearly appears from the record that the warranty deed to White was recorded before the Batchelder deed was recorded, and there is nothing in the record to show that White had any notice or knowledge of this prior unrecorded deed to Batchelder.

Respectfully submitted,

J. H. EVEREST,
Attorney for Appellees.

HOLT *v.* MURPHY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

No. 61. Argued December 6, 1907.—Decided January 6, 1908.

Under the general rule of law that an entry segregates the tract entered from the public domain subject to be entered until that entry is disposed of, this court sustains the rule of the Land Department that no subsequent entry can be received after the Land Commissioner has held the entry for cancellation until the time allowed for appeal has expired or the rights of the original entryman have been finally determined.

Where the successful party in a land contest does not enforce his preference rights or take any action looking to an entry within the prescribed period, but files a waiver of his right of entry, in the absence of any findings sustaining charges of fraud as to the delivery of the waiver, this court will not, in an action commenced four years thereafter, set aside a patent issued to one who had entered the land and in whose favor the waiver was filed.

15 Oklahoma, 12, affirmed.

THIS was a suit commenced in the District Court of Oklahoma County, Oklahoma, by appellant, praying that the appellees, the holders of the legal title to a tract of land in Oklahoma County, be decreed to hold that title in trust for her benefit. The District Court entered a decree in favor of the defendants, which was affirmed by the Supreme Court of the

Territory, 15 Oklahoma, 12, from whose decision this appeal was taken.

These facts are undisputed: On April 23, 1889, Ewers White made a homestead entry of the land. Subsequently two other parties, C. J. Blanchard and Vestal S. Cook, attempted to enter the same land. On July 16, 1889, in a contest before the local land officers, they held that all the claimants were disqualified because of entering the Territory in violation of the President's proclamation. On appeal the Commissioner of the General Land Office, on March 7, 1890, affirmed their ruling, dismissed the contests of both Blanchard and Cook, and held the entry of White for cancellation. From this decision White prosecuted an appeal to the Secretary of the Interior, who, on July 21, 1891, affirmed the decision of the Commissioner. 13 L. D. 66. During the time allowed for appeal to the Secretary from the Commissioner, and on March 11, 1890, Levi Holt, by his attorney in fact, filed a soldier's declaratory statement for the land, which was suspended by the register and receiver pending final action on the appeal. Thereafter and on November 29, 1890, before the decision by the Secretary of his appeal, White filed a relinquishment of his entry and all rights thereunder, and the defendant Samuel Murphy immediately thereafter made a homestead entry thereon.

In addition it was charged by plaintiff that after a decision by the Secretary of the Interior, in a contest between Murphy and Holt in favor of Holt, or rather in favor of his widow (as he had died in the meantime), a contract was entered into between plaintiff's attorney and the defendant Samuel Murphy, by which her attorney should deceive her as to her right in the land, and, for a pecuniary consideration received from Murphy, should file a waiver of her right of entry, and thus permit him to acquire a patent, all of which was done; that Anton H. Classen (the present holder of the legal title) and the other defendants were fully aware of what was thus wrongfully done; that the entry of Murphy appearing on the record as being unchallenged, a patent was, on January 19, 1898, issued

to him. Subsequently the title to most of the land passed to defendant Classen, who at the time of the filing of the waiver by plaintiff's attorney was receiver of the land office of the district in which the tract in controversy is situated, and who claimed in his answer among other things that he was a *bona fide* purchaser and without notice of any equities of the plaintiff.

Sections 2304 and 2309, Rev. Stat., provide for homestead entries by soldiers and officers who served in the army of the United States. By § 2309 the declaratory statement of such soldier or officer may be made by an agent as well as personally, and he is allowed six months thereafter to begin settlement and improvement, whereas in ordinary cases the entryman must make affidavit of his right to enter before the register or receiver, and must commence his residence and cultivation of the land immediately after the filing of the affidavit.

Mr. John S. Jenkins and *Mr. William Frye White*, with whom *Mr. John B. Cotton* was on the brief, for appellant:

The filing of Levi Holt's soldier's declaration, statement and application to enter after the entry of record in the records of the local land office of a judgment of the Commissioner of the General Land Office holding the prior entry of White invalid, did create a preference right of entry in Holt, although his filing had been received by the local land office and suspended, pending the right of appeal of White and his contestant in accordance with the settled practice and rule of the General Land Office in force at the time and for a long time thereafter. *McMichael* v. *Murphy et al.*, 20 L. D. 147, 535.

By the promulgation of the rule laid down in *McMichael v. Murphy*, *supra*, and its recognition and application through adjudged cases, a rule of property had become established, and inchoate property rights resulted, which are subject to protection by the courts, where the conditions called for by the rule were present. This being so, the courts ought to recognize the principle of *stare decisis* in respect to such a

rule and ought not to disregard rights attaching while it was the law of the tribunal which had jurisdiction to determine them.

Upon White's relinquishment of his entry, pending his appeal from the judgment of the Commissioner of the General Land Office holding his entry void and for cancellation, the suspended application of Levi Holt became a subsisting entry.

Mr. J. H. Everest for appellees:

The plaintiff has not shown herself entitled to a patent to the land and her bill, therefore, lacks equity. *Baldwin* v. *Keith*, 75 Pac. Rep. 1124; *Bohall* v. *Dilla*, 114 U. S. 51; *Sparks* v. *Pierce*, 115 U. S. 408; *Lee* v. *Johnson*, 115 U. S. 48; *Emblen* v. *Lincoln Land Co.*, 184 U. S. 661, 663.

The plaintiff never in fact acquired any right or equity in the land involved because the decision of the Secretary of the Interior awarding the heirs of Levi Holt the right to enter said land was erroneous and contrary to law. See *Patrick* v. *Kelley*, 11 L. D. 326; *Goodale* v. *Olney* (on review), 13 L. D. 498; *Re Maggie Laird*, 13 L. D. 502; *Holmes* v. *Hockett*, 14 L. D. 127; *Swanson* v. *Simmons*, 16 L. D. 44; *Mills* v. *Daly*, 17 L. D. 395; *Cook* v. *Villa* (on review), 19 L. D. 442; *Walker* v. *Snider* (on review), 19 L. D. 467; *Gallagher* v. *Jackson*, 20 L. D. 389; *McMichael* v. *Murphy et al.* (on review), 20 L. D. 535; *McCreary* v. *Wert et al.*, 21 L. D. 145.

As to the defendant, Anton H. Classen, and the one hundred and twenty acres of land claimed by him, the record shows that he was an innocent purchaser after patent without notice of any of the pretended equities of the plaintiff. *Colorado Coal & Iron Co.* v. *United States*, 123 U. S. 307; *United States* v. *Marshall Silver Mining Company*, 129 U. S. 579.

The plaintiff was guilty of laches in the prosecution of her suit and should, therefore, be barred of relief in a court of equity. *Wagner* v. *Baird*, 7 How. 234; *Galliher* v. *Cadwell*, 145 U. S. 368; *Johnson* v. *Standard Mining Co.*, 148 U. S. 360.

MR. JUSTICE BREWER, after making the foregoing statement, delivered the opinion of the court.

The plaintiff alleges in her petition that the land is worth $100,000. It appears that she has never been in Oklahoma; that neither she nor her husband ever entered upon or cultivated the land, and yet she asks the court to give her this valuable property, taking it away from those who, at least by their presence and occupation of the tract, have assisted in building up a State having more than a million inhabitants.

Another matter is worthy of notice. According to a report of the register of the local land office to the General Land Office at Washington, on May 12, 1897, the attorney for the plaintiff was notified of the decision in her favor by the Commissioner of the General Land Office, and on June 16 of that year that attorney filed the waiver of the preference rights thus awarded to her. The patent to Murphy was issued on January 19, 1898, and recorded in the office of the register of deeds in Oklahoma County on January 25, 1898. This suit was commenced on September 16, 1901. It, therefore, appears that the plaintiff took no action until more than four years after the waiver by her attorney of her preference rights and three and a half years after the issue of the patent and its record in the county in which the land is situate. It is true that she claims to have been ignorant of the decision in her favor, and that she relied upon her attorney, whom she charges was engaged in a conspiracy to defraud her. Although this reliance, so far as it was reasonable and in fact controlled her, may, to some extent, at least, have excused her inaction, yet it must also be remembered that not improbably her inaction may have influenced some of the defendants to deal with the land in reliance upon the title passing by the patent to Murphy.

The decree in the District Court finds that the plaintiff "has failed to sustain the material allegations of her petition," and holds that neither she nor any of the heirs of Levi Holt "have any right, equity or interest in and to said tract of land above

described or any part thereof," and quiets the title of defendants against all their claims, while the Supreme Court, in its opinion, says that the District Court was warranted in finding that the "allegations of fraud in the petition were not sustained by the evidence."

The Supreme Court, however, rested its decision largely upon this rule of law: That whenever an entry has been made of a tract of land that tract is segregated from the mass of public land subject to entry until the existing entry is disposed of.

Counsel for appellant do not question the general rule as to the effect of an entry regular upon its face, and concede that it is no longer open to doubt, in view of the many rulings of the Land Department and the decisions of this court, *Hodges* v. *Colcord*, 193 U. S. 192; *McMichael* v. *Murphy*, 197 U. S. 304, the latter, involving the land in controversy, but they seek to distinguish this case in that the local land officers had held all the claimants disqualified, and that on appeal the Commissioner of the General Land Office, on March 7, 1890, had affirmed their ruling, dismissed the contests of Blanchard and Cook, and held the entry of White for cancellation; that the application of Holt to enter was made on March 11, 1890, before any appeal had been, in fact, taken from the decision of the Commissioner to the Secretary of the Interior. In other words, at the time that Holt applied to make his entry there was no pending entry. It could not have been foretold whether White would appeal from the decision of the Commissioner of the General Land Office, and if he did not, there would be no entry to conflict with Holt's application. They contend that the application of Holt should have been recognized as an application to enter the land, to take effect if White should not appeal from the decision of the Commissioner, or if, on appeal, that decision should be sustained. In that way Holt would have been given priority over all subsequent entries. Counsel further say that such was then the ruling of the Department, citing especially *McMichael*

v. *Murphy*, 20 L. D. 147, and that although that decision has been overruled, yet that it was the law of the Land Department, as then established by its practice, and should be recognized as controlling the rights of the parties. The case in which, as they concede, the doctrine of *McMichael* v. *Murphy* was overruled is *Cowles* v. *Huff*, 24 L. D. 81, decided in January, 1897, a year before the issue of the patent in this case.

The difference in the ruling is disclosed by the two cases of *Henry Gauger*, 10 L. D. 221, and *Allen* v. *Price*, 15 L. D. 424. In the former it was held:

"An application to enter may be received during the time allowed for appeal from a judgment of cancellation, subject to such appeal, but should not be made of record until the rights of the former entryman are finally determined."

In the latter the Secretary said (p. 426):

"The act of May 14, 1880, 21 Stat. 140, granting to a successful contestant the preference right of entry, and the act of July 26, 1892, 27 Stat. 270, granting to his heirs the same rights, it must be admitted, conferred a right upon such party, and when we consider that this right must be exercised within the limited period of thirty days, and that it can only be exercised upon a specified and limited tract of land, is it not reasonable to assume that it was the intention of such legislation to reserve from other appropriation, for the period specified, the designated tract of land, and thus enable the party intended to be benefited, to reap the reward of his diligence in procuring the cancellation of the prior entry?

"Upon mature reflection, I am convinced that, to hold otherwise, is, by implication at least, to assume that Congress holds out inducements to a party to take certain action, but fails to protect him in the rights such action secures. To reserve the land for the time specified will certainly be in the line of protecting the contestant's rights, and no other party can be seriously prejudiced thereby."

In *McMichael* v. *Murphy*, 20 L. D. 147, he held that (p. 152): "One of the rules of this Department, established by a num-

ber of decisions, is, that a judgment of your office, holding an entry for cancellation, is final so far as that tribunal is concerned, and at once throws the land involved open to entry. That an application to enter made after the date of said judgment and within the time allowed for appeal, should be received, but not placed on record until the time for appeal has expired, or the rights of the entryman on appeal have been determined by this Department. In other words, that such an application shall be received subject to the rights of the entryman on appeal;" while in *Cowles* v. *Huff*, *supra*, it was decided that "An application to enter should not be received during the time allowed for appeal from a judgment canceling a prior entry of the land applied for; nor the land so involved held subject to entry, or application to enter, until the rights of the entryman have been finally determined."

In the course of his opinion the Secretary, after noticing the difference between the cases of *Henry Gauger* and *Allen* v. *Price*, said, 24 L. D. 86:

"This summary shows beyond any question that there is, in some particulars, at least, an irreconcilable conflict between these cases. To the extent of such conflict one or the other of them must be overruled. From a careful examination of the subject I am convinced that the doctrine announced in *Allen* v. *Price* furnishes the better practice, and it will be followed. The case of *Henry Gauger*, 10 L. D. 221, is therefore overruled. All other cases following it, in so far as they may be in conflict with the views herein expressed, are also hereby overruled."

See, also, *Stewart* v. *Peterson*, 28 L. D. 515, in which the Secretary held that (p. 519): "In order that this important matter of regulation may be perfectly clear, it is directed that no application will be received, or any rights recognized as initiated by the tender of an application for a tract embraced in an entry of record, until said entry has been canceled upon the records of the local office." To fully appreciate the scope of this ruling it must be remembered that the local land officers

do not, except in the case of a relinquishment by the entryman, on their own judgment cancel an entry of record in their office, and that it remains until the Commissioner of the General Land Office sends directions to the local land officers to cancel it; and, further, that the Commissioner, even after his decision against the validity of the entry, sends down no order for its cancellation until after the time has expired for appeal from his decision, or until an appeal, if had, is finally disposed of by the Secretary (p. 517). Hence, by this rule, which was in force at the time the patent was issued, the appellant took no rights, preferential or otherwise, by the declaratory statement filed in March, 1890. Such a rule, when established in the Land Department, will not be overthrown or ignored by the courts, unless they are clearly convinced that it is wrong. So far from this being true of this rule, we are of opinion that to enforce it will tend to prevent confusion and conflict of claims.

But, further, it appears that a waiver in proper form of appellant's right of entry was filed in the Land Department after the decision in the contest case in her favor, and before the patent was issued to Murphy. Indeed, after that decision and after notice to her attorney she failed to take any action looking to an entry within the prescribed time.

As by the findings of both the trial and Supreme Court of the Territory all charges of fraud and misconduct may be put one side, there was nothing to prevent the waiver receiving operative force, and that, together with the delay on her part in attempting to enforce her preference rights, left the land free for Murphy's entry and the patent thereon.

The decision of the Oklahoma courts was right, and it is

Affirmed.